

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TIMOTHY WHITE,)
)
Plaintiff,)
)
vs.) 3:11-CV-1817-B
)
REGIONAL ADJUSTMENT)
BUREAU, INC., d/b/a)
RAB, INC.,)
)
Defendant.)

MOTION FOR SANCTIONS - VOLUME 5
BEFORE THE HONORABLE JANE J. BOYLE
UNITED STATES DISTRICT JUDGE
NOVEMBER 26, 2013

A P P E A R A N C E S

MARSHALL S. MEYERS, PRO SE:

WEISBERG & MEYERS, LLC
5025 N Central Avenue - #602
Phoenix, AZ 85012
888/595-9111

For Mr. Radbil:

MARTIN DISIERE JEFFERSON & WISDOM
808 Travis Suite 2000
Houston, TX 77002
713/632-1700
BY: DALE JEFFERSON
RAUL H. SUAZO

For RAB:

ROBBIE L. MALONE
EUGENE E. MARTIN
8750 North Central Expressway - Suite 1850
Dallas, TX 75231
(214) 346-2631

SHAWNIE ARCHULETA, CSR/CRR
FEDERAL COURT REPORTER - 214.753.2747

1 COURT REPORTER: SHAWNIE ARCHULETA, TX CCR No. 7533
2 1100 Commerce Street
3 Dallas, Texas 75242

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SHAWNIE ARCHULETA, CSR/CRR
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NOAH RADBIL

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RAB Exhibit 45

1 (In open court at 10:00 a.m.)

2 THE COURT: Good morning. For the record
3 this, is Civil Action 3:11-CV-1817. We're here for
4 the final hearing on the motions by the defendant
5 Regional Adjustment Bureau for sanctions under
6 Rule 37 and Title 28 U.S.C. Section 1927.

7 I wanted to get an idea of what the
8 parties have planned so I can at least tell you if
9 that is what is in accordance with what my plan is,
10 and I think it is. The understanding is that
11 Mr. Radbil will be back up on the stand for no
12 longer than an hour -- and I will time that -- with
13 Mr. Suazo, and then Ms. Malone has no longer than an
14 hour of questions for Mr. Radbil.

15 And then, as I understand it, unless the
16 Court plans otherwise, we will be talking about
17 closing statements. So with that in mind, go ahead
18 and introduce yourselves, each side for the record,
19 and then I want to hear your comments on that time
20 frame.

21 MR. MEYERS: Good morning, Your Honor.
22 Marshall Meyers for Weisberg & Meyers. Sounds good,
23 Your Honor.

24 MR. JEFFERSON: Dale Jefferson and Raul
25 Suazo for Mr. Radbil. And yes, we conferred with

1 Rod earlier and believe that we can stick within the
2 parameters that you have suggested.

3 THE COURT: Thank you.

4 MS. MALONE: Robbie Malone and Xerxes
5 Martin on behalf of Regional Adjustment Bureau, and
6 I will try not to talk fast to make sure we keep
7 within that time period. I will try to keep it
8 slow.

9 THE COURT: Appreciate it very much.

10 If nothing else, Mr. Radbil come back up
11 here. You are under oath. And Mr. Suazo, if you
12 will.

13 **NOAH RADBIL,**
14 having been first duly sworn, testified as follows:

15 **CONTINUED DIRECT EXAMINATION**

16 MR. SUAZO: May I proceed, Your Honor?

17 THE COURT: Mr. Suazo, go ahead.

18 Q. (By Mr. Suazo) Good morning, Mr. Radbil. Are
19 you ready to continue?

20 A. Good morning. I am.

21 Q. We have an hour, so let's try to be real quick
22 and real efficient, because I have a couple of
23 areas -- a number of areas that I want to try to
24 cover with you in a pretty short time period.

25 At the last hearing we had covered a number of

1 grounds, and I want to cover a couple more of the
2 grounds that were related to the events that
3 occurred with this specific case.

4 One of them was, there was some discussion
5 about you having subpoenaed witnesses and then not
6 actually spoken with them before they arrived at
7 trial. Do you remember that line of inquiry?

8 A. I do.

9 Q. The suggestion was, I think, that you shouldn't
10 call a witness to the stand without having
11 interviewed them in advance of them appearing down
12 at the courthouse. Do you remember that line of
13 inquiry?

14 A. I do.

15 Q. First of all, were these, in your opinion, key
16 witnesses to the case?

17 A. No.

18 Q. Were these people, for example, that had
19 negotiated an agreement on behalf of Dr. White, and
20 that agreement was the subject of the trial?

21 A. No.

22 Q. Were these witnesses that had heard some
23 fraudulent misrepresentation or anything along those
24 lines?

25 A. No.

1 Q. What, briefly, was the role of these witnesses
2 if they were going to be allowed to testify?

3 A. They were people who he interacted with in his
4 day-to-day life, and they were going to testify
5 about his condition generally from a lay
6 perspective.

7 Q. So this is basically kind of, for lack of a
8 better set of terminology, a moan and groan witness?

9 A. Precisely.

10 Q. Is there a strategic reason sometimes to not
11 call a witness and talk to them before they actually
12 take the stand?

13 A. Yes, there is.

14 Q. Just briefly, without going into much detail,
15 what would that be?

16 A. The question on cross would be, did you talk to
17 the other counsel, and the inference is that their
18 testimony may be coached or they may have been told
19 what to say, so. . .

20 Q. If you would look at your notebook there, Tab
21 16, I want to direct you to Volume 1, page 41 of the
22 trial transcript.

23 Before this trial ever started -- if you go to
24 line 20 of page 41.

25 A. Which binder? I'm sorry.

1 Q. It's that one that you have your hand on. And
2 if you will go to Tab 16, you will see the
3 transcript from the trial, from the pretrial
4 conference, Volume I, February 25th, 2013. And if
5 you would just go to page 41, begin at line 20, you
6 will see that you describe the issue of a
7 continuance versus not calling these witnesses. If
8 you could just summarize for the Court what you told
9 the Court with regard to these witnesses.

10 A. I said, quote: The reason they weren't
11 disclosed is because, as I was preparing my client
12 for pretrial, and I was somewhat surprised that
13 there were additional people also.

14 Q. Let me focus you to line 20.

15 A. Line 20? Okay: But again, I don't think the
16 case is going to turn on them. So if it's going to
17 be a choice between a continuance versus excluding
18 them, I think Dr. White can testify certainly about
19 whether or not his neighbor saw him in his car at
20 one point doing something or other. I don't
21 think --

22 Q. And the point is this: Did you view these
23 people as significant key witnesses to the case?

24 A. No. And they had --

25 Q. Were these Dr. White's friends or colleagues?

1 A. Two were his neighbors, and the rest were
2 people he worked with.

3 Q. All right. The next issue I want to kind of
4 skip over to are the exhibits, and there were a
5 number of questions asked about exchanging exhibits.
6 And the question was whether or not you had provided
7 RAB's counsel with a copy of the exhibits in a
8 timely manner. So I want to look at this real
9 briefly from the perspective of two reasonable
10 lawyers trying to figure out a solution to a
11 problem.

12 First of all, did you designate volumes and
13 volumes and thousands of pages of exhibits for this
14 trial?

15 A. No, I did not.

16 Q. Did you have more exhibits than what RAB has
17 submitted just for this sanctions hearing?

18 A. No, I believe I had less.

19 Q. Do you remember how many exhibits that you
20 listed at the -- for the trial of this case?

21 A. No. I want to say 16, 17, 18, 19, around that
22 area, around 20.

23 Q. All right. If you would, let's go to Tab 17 of
24 the notebook. And this, by the way, is RAB
25 Sanctions Exhibit Number 5.

1 And just briefly, to be efficient here, is this
2 a pretrial disclosure that came from your office for
3 Dr. White dated December 7, 2012?

4 A. That's correct.

5 Q. And how many days in advance of the trial -- of
6 the February 20th roughly trial are we talking
7 about? Roughly 60 days before trial, maybe a little
8 longer?

9 A. Yes.

10 Q. Is there an exhibit list on this December 7th,
11 2012, filing?

12 A. There is attached as page Number 4, which is
13 Defendant's App. 01444.

14 Q. It looks like the 18th exhibit is any
15 admissible exhibit identified by RAB. So would you
16 agree that there were 17 exhibits that you
17 designated on behalf of Dr. White?

18 A. Yes.

19 Q. If you could, keep that page handy and go to
20 the next Tab, and it's Radbil Exhibit Number 25.
21 And just briefly, is this a First Supplemental Rule
22 26(a) Disclosure Statement?

23 A. It is.

24 Q. And on the last page, you see a Certificate of
25 Service dated January 18, 2012?

1 A. Yes.

2 Q. And then if you skip a couple of pages back to
3 the sixth page of the exhibit, there is also a Bates
4 label on it, App. 212. Do you see an exhibit list
5 there? It should be Tab 18, Mr. Radbil.

6 A. Yes, I do.

7 Q. Okay. If you could compare the page I told you
8 to keep your hand on, compare those two exhibit
9 lists just real briefly, are they the same?

10 A. They look to be the same. And I will make one
11 correction. I think the date is incorrect on Tab
12 18. I believe it's 2013.

13 Q. Fair enough. All right. Now, let's just pick
14 one of the lists, since they are the same, and let's
15 kind of go down it real quick.

16 Is there any doubt in your mind that RAB knew
17 and already had a copy of what Exhibits 1 through 5
18 were from the description that was provided on the
19 exhibit list?

20 A. No question in my mind.

21 Q. What are Exhibits 1 through 5? What are they,
22 just generally? Without reading every single one of
23 them, what are they generally dealing with?

24 A. They are depositions.

25 Q. All right. Let's go to -- there's a couple

1 more. We need to do 6 through 17. But before we do
2 that, take a look at the -- look at the next Tab,
3 and this is docket entry number 98. It's RAB's
4 trial exhibit list. And do you see their trial
5 exhibit list?

6 A. I do.

7 Q. All right. So let's go through this. Hold
8 your finger on those two pages. Is White Exhibit 6
9 the same as RAB Exhibit 1?

10 A. It is.

11 Q. Is White Exhibit 14 the same as RAB Exhibit 5?

12 A. It is.

13 Q. Is White Exhibit 15 the same as RAB Exhibit 6?

14 A. It is.

15 Q. Is White Exhibit 16 the same as RAB Exhibit 8?

16 A. Yes.

17 Q. Is White Exhibit 17 the same as RAB Exhibit 2?

18 A. Yes.

19 Q. All right. So that leaves us with 7 through 12
20 and Number 13. Let's focus on Number 13 real quick.

21 Is there any doubt in your mind that RAB knew
22 what White Exhibit 13 was and why? Why do you say
23 that?

24 A. They produced it, and it's Bates label RAB 0046
25 to 0097 and then RAB 0216 to 0267.

1 Q. So the document on the exhibit list, on the
2 Dr. White exhibit list, was identified by RAB Bates
3 pages --

4 A. That's correct.

5 Q. -- is that correct?

6 A. Yes.

7 Q. All right. So let's go to Exhibit 7. Is there
8 any doubt in your mind that RAB knew what White
9 Exhibit 7 was?

10 A. No.

11 Q. Why not?

12 A. They were Regional Adjustment Bureau,
13 Incorporated's, own account notes that they
14 produced. And again, they are marked by Bates label
15 RAB 0215. They are marked by RAB and identified by
16 us as -- by their Bates label.

17 Q. That leaves us now with Exhibits 8 through 12.
18 We have covered every single one. Is there any
19 doubt in your mind that RAB's counsel or RAB knew
20 what White Exhibits 8 through 12 were?

21 A. 8 through 12?

22 Q. Yes. Are they identified by some way on the
23 exhibit list?

24 A. Yes. They are identified by docket number and
25 page number for Exhibit 5. And there is a

1 declaration which is identified by docket number and
2 the Internet Web page, which is Exhibit Number 10,
3 Tab 18, page Number 6, which is App. 212. That was
4 an Internet Web page with an address and also was on
5 file with the Court. And the docket number and page
6 number or the pin cite is there --

7 Q. Let me stop you for just a second. 8 through
8 12, at the very end of the description of the
9 exhibit there is a parenthetical that says, See doc
10 page 60, 5 of 5. Is Doc 60 the PACER ID number?

11 A. Doc 60 I think is the declaration of Timothy
12 White.

13 Q. Well, for example, the Internet Web page,
14 Exhibit 10, it says Doc 51-2. That was part of your
15 summary judgment briefing, correct?

16 A. Yes.

17 Q. And is Doc 51-2 the reference to the PACER
18 document number on file with the Court?

19 A. Yes. The appendix would be 51-2 docketed.

20 Q. So given that there are PACER ID numbers for 8
21 through 12 -- and we have covered all the
22 exhibits -- is there any doubt in your mind that RAB
23 knew what these exhibits were?

24 A. No question.

25 Q. By disclosing these exhibits 75 days or so

1 before the actual trial was set to commence,
2 Mr. Radbil, were you purposefully doing something
3 with a bad faith motive to try to ambush the
4 opposing side?

5 A. No, sir.

6 THE COURT: Mr. Suazo, if you could,
7 because there are so many factual scenarios here
8 that the parties are going over, specifically to
9 what point that RAB has made in connection with
10 these sanctions motions does this go? Obviously, it
11 goes to something about disclosures and exhibits,
12 but I want to be clear on that.

13 MR. SUAZO: There has been -- and if you
14 look at some of the briefing, there has been an
15 argument that counsel didn't properly or timely
16 exchange exhibits. And my point --

17 THE COURT: Actual physical exhibits or
18 lists?

19 MR. SUAZO: Actual physical exhibits. And
20 I'm getting to the actual physical exchange in just
21 a moment. But the point I'm trying to look at is,
22 from the perspective of two reasonable lawyers with
23 a problem here, the list identifies sufficiently all
24 of the exhibits. I understand that there may still
25 be a requirement that you actually physically

1 exchange the exhibits.

2 THE COURT: Well, it's not just a
3 requirement, it was part of the Court's order.

4 MR. SUAZO: Well, part of the Court's
5 order, and I'm getting to that. But the point that
6 I'm trying to get at is, there is no prejudice, no
7 harm, no fowl, because all of the documents that are
8 sufficient -- a lot of the documents are the same as
9 the ones on their exhibit list. Some of them are
10 very simply the deposition, and so I'm actually
11 going to the prejudice standpoint, the damages
12 standpoint.

13 THE COURT: That's what I want to make
14 sure I understand. So it goes to the prejudice or
15 lack thereof and not to whether or not this was
16 something that should not have occurred. In other
17 words, you have to follow the Court's order, you
18 have to follow the local rules. You are not saying
19 that this somehow exculpates him from that. As I
20 understand it, it's more to how prejudiced were they
21 for what he did wrong.

22 MR. SUAZO: Only to the extent, Judge,
23 that sanctions would require bad faith. And I can't
24 see someone putting this detailed of a disclosure if
25 they didn't transmit the exhibits timely doing that

1 in bad faith or as some part of ambush, because the
2 description is pretty detailed.

3 THE COURT: I understand that that's your
4 theory. All right. Go ahead.

5 Q. (By Mr. Suazo) Okay. Mr. Radbil, did you, in
6 fact, attempt to exchange exhibits with Ms. Malone?

7 A. I did.

8 Q. Were there some communications or
9 miscommunications between the two of you involving
10 the exchange of exhibits?

11 A. There were communications between Ms. Malone
12 and I. And I specifically requested courtesy
13 copies, which were refused because the originals
14 that Ms. Malone had attempted to provide were sent
15 to the Dallas office where I presume -- although I'm
16 not sure -- that she knew I was not at. I think she
17 knew I was in Phoenix.

18 Nonetheless, we faxed the exhibits. And I was
19 traveling at the time. I heard from one of the
20 paralegals or secretaries, and she said that all of
21 the documents had gone through except for two. And
22 I said, e-mail them. And the response was, she's
23 refusing to accept the documents by e-mail.

24 Q. Okay. Let me stop you there and break it down.
25 Did you instruct an employee at Weisburg & Meyers to

1 e-mail Ms. Malone a copy of the exhibits?

2 A. Yes.

3 Q. Let's go to Tab 20 of that notebook. This is
4 Radbil Exhibit 14. And this, by the way, is
5 attached also as Exhibit C to the affidavit of Cathy
6 Bopp, which is listed as docket entry 143-3 filed on
7 August 7th, 2013, by Weisberg & Meyers in connection
8 with these sanctions proceedings.

9 And just briefly, what's going on with this
10 particular exhibit, Regional Adjustment Bureau
11 Exhibit 14? What is it is?

12 A. It's an attempt to get her copies of the
13 exhibits so we can meaningfully confer. It documents
14 the course of our attempts to get her the copies of
15 the exhibits, physical copies.

16 Q. I want to read the first sentence of this
17 e-mail from Ms. Malone to Ms. Bopp. Ms. Bopp is an
18 employee of Weisberg & Meyers or was at the time of
19 this e-mail exchange, correct?

20 A. At the time she was.

21 Q. And the e-mail says: I have not agreed to
22 accept service of the documents by e-mail.

23 Do you see that?

24 A. Yes.

25 Q. And is that -- am I reading that correctly?

1 A. It says: I have not agreed to accept service
2 of the documents by e-mail.

3 Q. Okay. And so were efforts being made to
4 exchange the exhibits with Ms. Malone by you and/or
5 your office?

6 A. Yes.

7 Q. Did you file a pleading in this case entitled,
8 Status Report Regarding Pretrial Exhibit Exchange
9 and Conference that's marked as docket entry 103
10 that just goes through the entire history of all of
11 the e-mails and communications that were undertaken?

12 A. Yes.

13 Q. And I don't want to go through it because it
14 was a pretty long filing with a number of documents.
15 But you actually remember doing that?

16 A. Yes.

17 Q. Did you, Mr. Radbil, send a copy of the
18 exhibits to the Court?

19 A. I did.

20 Q. Take a look at Tab 21, which is Radbil
21 Exhibit 13. And let me just ask, is this the
22 Federal Express package receipt that entailed
23 sending the exhibits to the Court?

24 A. It is.

25 Q. Do you see at the top of this Radbil

1 Exhibit 13, Radbil Sanctions Exhibit 13, there's a
2 number on the FedEx package, 801778145610, that's
3 the tracking number. Do you see that?

4 A. I do.

5 Q. Does that match the receipt down at the bottom
6 of that exhibit? You have to turn your head
7 sideways to see it.

8 A. Yes.

9 Q. Is this your handwriting on this document?

10 A. It is.

11 Q. Why were you actually the one that was
12 physically doing all of this?

13 A. A lack of administrative support. I had asked
14 for --

15 Q. It wasn't -- it wasn't a legal assistant, it
16 was actually you that did this?

17 A. I printed the exhibits from the hotel in
18 Houston, and I had the taxi cab driver stop at FedEx
19 on the way to, I believe, the airport, and I ran in
20 and used my credit card and overnighted them. And
21 again, I should have followed up with the Court;
22 but, yes, it was actually me, and that's why.

23 Q. All right. All right. There was also some
24 discussion about you not returning Ms. Malone's
25 calls on a Saturday to talk about exhibits, and of

1 course I think a lot of the exhibits are the same
2 that are being offered. But did you, Mr. Radbil,
3 call Ms. Malone back within 24 hours of receiving
4 all of the e-mails and phone calls from her?

5 A. I don't know whether she initiated contact
6 again with me or whether I returned her call, but we
7 did end up speaking within 24 hours and conferencing
8 to work out a number of the issues that were
9 required by the Court-ordered conference.

10 Q. Okay. If you would, take a look at Tab 22 in
11 your notebook. It's document entry 118-9, filed
12 with this Court. It's marked with a Bates label
13 App. 304. It was part of RAB's file in this case.
14 And there's a time entry four lines down in
15 Ms. Malone's time entries, and it reflects there's a
16 two-hour conference call on February 24th, which is
17 a Sunday, a conference call with plaintiff's
18 attorney. Do you see that?

19 A. I do.

20 Q. And it's listed as two hours. Do you generally
21 agree that you had a two-hour telephone conference
22 within 24 hours of the phone calls and the e-mails
23 that went to you the day before?

24 A. We talked extensively, yes; I would agree with
25 that statement.

1 Q. All right. So to the extent there's anything
2 that suggests or implies that the two of you didn't
3 speak within 24 hours or have a lengthy conversation
4 within 24 hours of all these phone calls, is that
5 correct, or did you get back in touch with her?

6 A. No, we were in touch within 24 hours.

7 Q. Okay. Let's go on to a couple other additional
8 points. There was some discussion about whether or
9 not at the -- well, there was some discussion at the
10 first sanctions hearing in this case where one of
11 your disclosures said "one of whom" instead of "none
12 of whom." Do you remember the discussion about that
13 typo?

14 A. I do, yes.

15 Q. And that discussion was with regard to listing
16 the witnesses that said, "one of whom will be called
17 as an expert," and you meant to put down what?

18 A. There is an N missing after the M dash, so it
19 is supposed to be "none of whom," which is
20 consistent with the response itself.

21 I think that was the second response -- the
22 first response had filed two motions to strike
23 experts that we hadn't designated. The first we
24 didn't even respond to because there was nothing to
25 strike.

1 Q. So just real briefly, you do remember admitting
2 at the first sanctions hearing that that was a typo.
3 It should have said "none of whom will be called as
4 an expert," but it said "one of whom," by accident.

5 A. Yes, that was my error.

6 Q. And there was a suggestion that this led to
7 additional work by RAB during the questioning. Do
8 you remember that?

9 A. Yes.

10 Q. So I kind of want to turn that around a little
11 bit. Do you remember your position to the Court
12 that RAB agreed that it used an automated telephone
13 dialer system, an ATDS?

14 A. I remember my argument to the Court, yes.

15 Q. And where did you get that argument from?

16 A. The pretrial order that was divided into
17 sections, the defendant's and plaintiff's sections;
18 again, from the defendant's section.

19 Q. Let's go to Tab 23, if you would. This is
20 Radbil Sanctions Exhibit 6, and let's go to page 5.
21 And in fact, it's the last paragraph, the last two
22 sentences. And let me know when you are there.

23 A. I'm there.

24 Q. All right. Go ahead and read the last two
25 sentences to this Court.

1 Is this where you were getting the argument
2 that it was undisputed?

3 A. Yes. This was not the sole piece of evidence,
4 but, yes, in large part.

5 Q. Go ahead and read those two sentences to the
6 Court.

7 A. "Defendant contends that the vast majority of
8 its calls were made manually. In fact, only three
9 calls were made engaging the ATDS, and only one of
10 those was an outbound call."

11 Q. Okay. Before you just blurted that statement
12 out to a jury during opening statement or during
13 examination of a witness, did you actually bring
14 this to the Court's attention whether you could
15 refer to this as undisputed before any proceedings
16 began with the jury in the box?

17 A. I did. And the purpose was to eliminate
18 disputes and questions over facts which were really
19 not disputed. And I believed that this was a fact
20 that, based on their business records and the
21 pretrial order, that it shouldn't be something that
22 would be argued about or in dispute.

23 Q. All right. Let's go to Tab 24. It's Volume 2
24 of the jury trial, and it's page 80, and there's
25 some discussion in there about the joint pretrial

1 order. And it looks like at page 80, lines 2
2 through 6, you're explaining to the Court your
3 belief that it's undisputed. Is that true?

4 A. Can you repeat the question, please?

5 Q. It looks like at lines 2 through 6 you're
6 talking to the Court about your position that in the
7 joint pretrial order it's undisputed that an ATDS
8 was used, at least for three phone calls. Is that
9 generally correct?

10 A. There's no mention of three phone calls in
11 there, but I do -- yes.

12 Q. And then it looks like at lines 12 through 15
13 you're actually going to read from the joint
14 pretrial order. Do you see that?

15 A. Yes, I do.

16 Q. And then, because the jury was ready to come in
17 or was going to come into the box and time was kind
18 of cramped, the argument had to be continued, and it
19 was decided that it was not undisputed at that
20 point.

21 A. Yes, the Court ruled that it was not
22 undisputed, and so the Court ordered that I couldn't
23 say that it was a fact.

24 Q. Right. And the point that I'm trying to get at
25 is, Mr. Radbil, before you started making any of

1 that argument to the jury or while they were in the
2 room, did you bring that to the attention of the
3 Court?

4 A. I brought it to the attention of the Court I
5 believe before the pretrial order was signed, and
6 then again after the pretrial order was signed.

7 THE COURT: Okay. Let me just make sure
8 I'm clear on this. I know the defense doesn't agree
9 with that. His argument had been that it was in the
10 pretrial order when the other side got upset about
11 it. And I'm trying to figure out where it was that
12 this was, as you kind of have portrayed, calmly
13 addressed and okayed so that he was taken off guard
14 when this was not allowed. How did that occur?

15 MR. SUAZO: Well, I wouldn't necessarily
16 say that it was calmly addressed --

17 THE COURT: That's not my recollection.

18 MR. SUAZO: -- because the jurors are
19 waiting to come in, and this gets brought up to the
20 Court. And I think Mr. Radbil had a few instances
21 where he was asking the Court, can I do this, can I
22 do this, can I do that.

23 THE COURT: Well, the position, though,
24 when Ms. Malone raised this, was this was clearly
25 never agreed to. He pointed us to the pretrial

1 order, and my recollection is I had him read from
2 it. I don't remember this ever being the subject of
3 any specific discussion pretrial, and I don't think
4 that's what you're suggesting, but I want to make
5 sure the record isn't indicating that.

6 MR. SUAZO: It's hard for me to say that
7 it was brought pretrial, because the pretrial
8 conference was the day before --

9 THE COURT: Well, the point is very
10 simple. We are not splitting hairs here. The point
11 that seems to be made here, at least the
12 inference we're supposed to draw from this, is that
13 somehow he was perfectly within his right because of
14 the discussions with the Court and also because of
15 the pretrial order to be surprised about this, that
16 this was undisputed. I don't recall that at all.

17 He pointed me to the pretrial order, and I
18 don't remember any discussion, any discussion, where
19 this was back and forth with the defense or with the
20 Court until they got upset because he started to
21 bring it up, however he brought it up, I can't
22 remember now, and he pointed me back to the pretrial
23 order. So you are not suggesting that we have just
24 all forgotten that it was all okayed for him ahead
25 of time, are you?

1 MR. SUAZO: No.

2 THE COURT: That's all I want to know.

3 MR. SUAZO: And I just succinctly make my
4 point. I think that Mr. Radbil gave a fair
5 interpretation of the joint pretrial order. As I
6 read it, I could fairly interpret it. It could be
7 interpreted many ways, but I think that's a fair
8 interpretation, and he did bring it before the Court
9 before --

10 THE COURT: I understand that's your
11 position, but I just want to make sure there is not
12 a broader scope that you are putting on this than
13 what actually happened. It's his interpretation
14 that was in his head that he gave me, not before,
15 not during, not until it came up when it was raised
16 by Ms. Malone and he read it from the pretrial
17 order. I don't recall it. And you are not saying
18 it was ever discussed, okayed, or addressed before
19 that except to the extent that we're supposed to
20 think that that's what happened.

21 MR. SUAZO: I think that the record
22 reflects that Mr. Radbil actually attempted to bring
23 it to the Court's attention.

24 THE COURT: When?

25 MR. SUAZO: Volume 2, page 80.

1 THE COURT: What part of the court trial
2 was that?

3 MR. SUAZO: That was before any witness --
4 what part?

5 MR. RADBIL: Sorry, Your Honor.

6 MR. SUAZO: I think it was before opening
7 or anything.

8 THE COURT: Let's get the line and page of
9 the transcript. I just want to find the transcript,
10 Mr. Radbil. Just point us to the line and page
11 where this was raised.

12 MR. SUAZO: Volume 2, page 80.

13 THE COURT: What line?

14 MR. SUAZO: Line 2 is where it begins.

15 THE COURT: And just so that I'm clear,
16 exactly what part of the trial is this?

17 MR. SUAZO: I believe this is before
18 opening.

19 THE COURT: Volume 2, page?

20 MR. SUAZO: 80.

21 THE COURT: 80. Okay.

22 MS. MALONE: I was just going to clarify
23 to the Court. We did the pretrial the day before.
24 This is after we've already done our pretrial stuff.
25 This is the next morning after the Court -- I think

1 actually after we've already done jury selection and
2 we are about to do opening.

3 I think the Court is thinking we are
4 talking about this is a pretrial conference, which
5 did not occur in the pretrial conference when we
6 were doing all the preliminary matters. This is
7 after we have selected a jury and right before we
8 are doing opening argument, and he raises it for the
9 first time, and we were understandably upset about
10 it.

11 THE COURT: Let's hear the question and
12 answer, either from you or Mr. Radbil. I don't want
13 argument from you, Mr. Radbil, I just want you to
14 answer the question. So let's go back and forth on
15 that transcript so it's clear what we are talking
16 about occurred pretrial, whether it was the day
17 before or minutes before the jury started.

18 Q. (By Mr. Suazo) Mr. Radbil, Volume 1, page 80,
19 just briefly tell the Court your recollection.

20 THE COURT: Just read it. Just read it.
21 Question, answer, that's what I want to hear.

22 Q. (By Mr. Suazo) Okay. Mr. Radbil, if you would
23 pick up at page 80, line 2 and read what you say to
24 the Court through line 6; lines 2 through 6,
25 Mr. Radbil.

1 A. 2 through 6 read:

2 "Mr. Radbil: I would like to also say
3 regarding --"

4 THE COURT: Slow, slow, slow.

5 A. "I would like to also say regarding -- one
6 moment -- that the defendant does, in fact, possess
7 and use an automatic telephone dialing system as
8 defined by the TCPA as provided for in the pretrial
9 order."

10 Q. And then the Court says at lines 7 to 8: "I
11 don't think that's undisputed."

12 And Ms. Malone says at lines 9 through 10:
13 "That is absolutely disputed, Your Honor."

14 And at line 11 the Court says: "It's not
15 undisputed."

16 And then what do you tell the Court between
17 lines 12 through 15?

18 A. I was attempting to explain --

19 Q. Just read the transcript, Mr. Radbil.

20 A. Mr. Radbil states, quote: "Defendant's
21 contentions, Your Honor, state, defendant contends
22 that the vast majority of its calls were made
23 manually. In fact, only three calls were made
24 engaging --"

25 Q. And then the Court stops you and says, picking

1 up at line 16: "It's not undisputed. It's not
2 undisputed, so you can't say that it's a fact.
3 Okay? I disagree with you. I will let you make a
4 record on it. But right now I want to get to
5 framing up this opening argument. You can't say
6 that, what you just asked me to say."

7 And then picking up at line 22 we go on to a
8 different topic.

9 A. Yes. And I would also like to add --

10 THE COURT: Okay. Now what I would like
11 to know -- that was what was discussed before the
12 jury trial started. Now, fast-forward to where you
13 were a few minutes ago in the trial that I'm trying
14 to figure out somehow mitigates this or explains
15 what occurred that is another point on the sanctions
16 motion.

17 MR. SUAZO: Well, once again, Judge, I'm
18 going to the issue of bad faith. And they put this
19 in their motion that Mr. Radbil argued to the Court
20 that it was -- it was undisputed when it was known
21 that it was always disputed.

22 That was an argument in either the 1927 or
23 Rule 37 Motion for Sanctions. I'm sorry, I just
24 don't remember. But it was one of their arguments.
25 And the point that I'm trying to make is, number

1 one, it's a fair interpretation given to what was in
2 the pretrial order; and then, number two, before an
3 opening statement was made or before this was
4 blurted out to the jury, he did bring it to the
5 Court's attention.

6 So to the extent that Mr. Radbil is trying
7 to do something in bad faith, I think it would have
8 just been a blurt out in the middle of the
9 proceedings as opposed to, Judge, may I do this,
10 which is how I'm reading that.

11 THE COURT: Okay. And I was thinking that
12 there was another juncture in the trial towards the
13 end that this came up again that you were somehow
14 focusing on as well.

15 MR. SUAZO: I'm not. I'm not. It was
16 merely the bringing it to the Court's attention in
17 advance.

18 MR. RADBIL: Your Honor, may I?

19 THE COURT: Let's go question and answer,
20 Mr. Radbil. You have lawyers, as I said last time.
21 It's a very good thing you have them, it's helping
22 the Court focus on the defense here, and that's the
23 way I want to keep doing it.

24 Q. (By Mr. Suazo) Mr. Radbil, we have a lot to
25 cover in a very short time.

1 The next one that I want to jump on to is the
2 client not being at the jury deliberations or not
3 being here for the reading of the verdict. Okay?

4 First of all, do you remember the issue
5 surrounding your client not being present for the
6 verdict?

7 A. I do.

8 Q. When you went to sleep the night before while
9 the jury was still out, were you expecting Dr. White
10 to attend the next morning?

11 A. Yes, at some point.

12 Q. Did you receive a text message from him the
13 following morning?

14 A. I did.

15 Q. Let's take a look at Tab 25, which is marked as
16 Radbil Sanctions Exhibit 35. And briefly, what are
17 these? Tell the Court what these are.

18 A. These are text messages between Dr. White and
19 myself in which he -- should I read them?

20 Q. Well, we will go through them real quick.

21 A. The bottom line is that he had to work, and he
22 had to make money. He was very concerned about
23 missing work, so he asked whether he absolutely had
24 to be there or not. And I recommended that he
25 should be there when the jury was back. And when

1 the verdict came back, I told him he should be here.

2 Q. Let's go through these real briefly. Did
3 Dr. White send you a message at 7:09 a.m. saying, "I
4 just left you a message. Is everything okay?"

5 A. Yes.

6 Q. And did Dr. White follow that up at 7:27: "Are
7 you in court? Please let me know. I hope it makes
8 sense to the Court that I work 70 hours a week with
9 blind and deaf -- blind people who wait an average
10 of three months for an appointment with me."

11 A. Yes.

12 Q. And if you go to the next page, did you respond
13 to the question of whether you were in court with
14 the answer, "Yes"?

15 A. I did.

16 Q. And then later, at 8:10 a.m. -- well, it says
17 8:10 a.m., and is the response: "They are not back
18 yet, but you should be here when they do come back"?

19 A. That is what I said, yes.

20 Q. And then at 8:11 a.m., does it say, "A verdict
21 is in"?

22 A. It does.

23 Q. And then after that, at 8:12 a.m., does
24 Dr. White say, "what time?"

25 A. Uh-huh.

1 Q. Is that a yes?

2 A. That's a yes.

3 Q. And do you respond to that by saying, "Now"?

4 A. Yes.

5 Q. After you respond at 8:12 a.m. and say, "Now,"
6 does he respond at 8:13 a.m., "I will come. I am
7 about 20 minutes away"?

8 A. Yes.

9 Q. At 8:50 a.m. does he say, "On my way up"?

10 A. Yes.

11 Q. Is that how everything unfolded with Dr. White
12 not being here for the reading of the verdict?

13 A. The Marshal had approached me and mentioned
14 that the judge wanted Dr. White to be here. And I
15 showed the Marshal the text message at the time and
16 said Dr. White was on his way up.

17 Q. Mr. Radbil, when you were quizzed about this
18 later on and you told the Court that you wanted --
19 you advised Dr. White that he should be here, were
20 you attempting to be honest in your communications
21 with the Court?

22 A. I was.

23 Q. Were you doing anything disrespectful by trying
24 to not have Dr. White here for the reading of the
25 verdict?

1 A. No. But I understand the Court's concern, and
2 I understand how it could look that way. And to the
3 extent I offended the Court, I do apologize.

4 When we walked out of court the day before, we
5 discussed this issue, and it was in terms of
6 absolute -- do I absolutely really need to be there,
7 and it wasn't because he was scared to be there, it
8 was because he wanted to go to work, and he was
9 concerned about working, so. . . I could understand
10 the Court's concern, but I did not try to mislead
11 the Court or Dr. White about his obligations.

12 Q. Mr. Radbil, we've been at maybe four or five
13 sanctions hearings. Have you seen a representative
14 from RAB at any of these sanctions hearings where
15 they are seeking hundreds of thousands of dollars,
16 whatever it is that they are seeking in monetary
17 damages, have you seen a RAB representative?

18 A. There was, I believe, a few people in the pews
19 back there at some point. I don't know who they
20 were or whom they were with.

21 Q. Let me ask you this: Ms. Malone testified that
22 a RAB representative hadn't been here. Do you
23 dispute that?

24 A. No, I don't.

25 Q. Have you seen a corporate representative that

1 you cross-examined?

2 A. Mr. Wyatt.

3 THE COURT: I need to know what your point
4 is. What difference does that make?

5 MR. SUAZO: Well, Judge, I don't know
6 if -- to the extent that the issue is whether or not
7 the client was not here for the reading of the
8 verdict, it's similarly an issue with RAB not having
9 a representative here for the sanctions. If the
10 issue --

11 THE COURT: I would completely disagree
12 with that, but I think you have made that point, so
13 let's go ahead. I think it would multiply the
14 difficulties that RAB has experienced in this case
15 based upon the conduct of these lawyers to have them
16 come here for each of these, however long, five
17 hearings we've had, but I would like for you to move
18 on to your next point.

19 MR. SUAZO: Yes, Your Honor.

20 Q. (By Mr. Suazo) On the next topic,
21 Mr. Radbil -- and I'm going to focus in on Tab 26,
22 which is Volume 2, page 168 of the -- of the trial.
23 You attempted to call RAB's corporate representative
24 essentially twice in a row. Do you remember that?

25 A. Very clearly, yes.

1 THE COURT: I just want to make sure we
2 are not covering ground that we have covered three
3 or four times already. The area that I believe you
4 are going into now is where Mr. Radbil wanted to
5 call this corporate representative back and argued
6 strongly about the deficiency of the discovery,
7 quoting from a deposition, only to determine later,
8 after Ms. Malone responded, that he was quoting from
9 the initial deposition. He had already made those
10 arguments to the magistrate judge and, in fact, had
11 gotten a second deposition, but he did not disclose
12 that to me. So a major part of the reason he was
13 asking to call him and the basis for the pretrial
14 deficiency was simply misrepresented to the Court.

15 If we're going back over what we have
16 already gone over, I don't want to do that. We have
17 talked about this now several times.

18 MR. SUAZO: Judge, the sole point that I
19 was going to make was, we did cover at the last
20 hearing how I thought using the second deposition --
21 or the first deposition was an impeachable point.
22 We covered that, and that wasn't my intent.

23 What I was going to go through was, I just
24 wanted to establish that -- well, though it looks
25 very unusual, and I would certainly not do that --

1 and I think Mr. Radbil now knows that you can't --
2 before a jury, have the appearance of one witness
3 taking the stand and then coming down and then
4 putting them back on, because it just looks very odd
5 and very unusual.

6 The mentality of it is, I've been in cases
7 also where you wind up having to take two
8 depositions because someone will say, well, he was
9 here in his individual capacity and not his
10 corporate capacity. That was the logic
11 that Mr. Radbil had, but it just looks so unusual in
12 court that it just shouldn't have been done. I
13 don't think it was bad faith, I think it was just a
14 mistake. It just was not very well thought out.

15 THE COURT: To argue from the first
16 deposition when he had a second, is that what you
17 are saying is a mistake?

18 MR. SUAZO: No. I think that was probably
19 not a point that was communicated well to the Court,
20 because I think I could have communicated the basis
21 for impeaching the witness with the first
22 deposition. I think I could have -- I can see
23 there's a basis for impeaching that first witness.

24 What I think is very unusual is calling
25 the witness to the stand, then having them come

1 down. And then, after he sits down saying, come
2 back to the stand and let me do it now. It should
3 have been done all in one --

4 THE COURT: I don't think that's unusual
5 at all. I think it happens all the time. The point
6 is that the way that Mr. Radbil posed it adamantly
7 as to why he should get to ask this man some more
8 questions was the deficiency provided by this
9 particular individual during the pretrial.

10 I don't think the up and down, that
11 happens in every case, is a point. But we've made
12 that point, and I understand where you are going
13 with it. And I will be determining the sanctions
14 issue, and I think we have covered it very, very
15 thoroughly.

16 MR. SUAZO: Fair enough. Fair enough.

17 Q. (By Mr. Suazo) Let's just keep going, then, to
18 a couple more points.

19 There's been some claims, Mr. Radbil, that you
20 -- that settlement negotiations were in bad faith,
21 and I want to ask you a couple of yes-or-no
22 questions.

23 Did you make the initial demand?

24 A. No.

25 Q. Did you personally reject the offer of

1 judgment?

2 A. No.

3 Q. Did you spend a large chunk of time defending
4 and defeating a summary judgment and prevailing on
5 your own?

6 A. I did.

7 Q. Did you attend a mediation conference?

8 A. The mediated settlement conference, yes.

9 Q. And you saw the order that came that said that
10 the parties negotiated in good faith, and there were
11 no objections to that order after it came down,
12 correct?

13 A. That's correct.

14 Q. There was an issue at the outset of the trial
15 about subpoenaing out-of-jurisdiction witnesses.
16 Why did you think you could issue the subpoena to
17 Ms. Malone about out-of-jurisdiction witnesses?

18 A. Because I erroneously relied on the Court's
19 order, which is based on a factual scenario, which
20 the Court misunderstood, and the Court had no
21 authority to subpoena those individuals. And the
22 order said that they must -- the defense had to
23 accept service or produce them at trial. The
24 defense elected to accept service of the subpoenas
25 then move to quash on grounds similarly asserted.

1 So I relied on the -- erroneously relied.

2 THE COURT: Of course we have covered this
3 so many times, Mr. Suazo. The problem, again, with
4 that was that despite the Court's understanding,
5 which has happened in many corporate out-of-state
6 cases where the parties agreed, they did not here.
7 And it was an extreme example of Mr. Radbil's lack
8 of experience that he didn't have any idea how to
9 get these individuals here; that he hadn't done this
10 kind of discussion and agreement; and that, without
11 that, he had no clue as to how to get the people
12 here.

13 That's the point. And again, it just
14 appears throughout this case as just a wholesale
15 lack of experience.

16 Let's move on to your next point. All
17 right?

18 Q. (By Mr. Suazo) Mr. Radbil, how old are you?

19 A. Thirty-two.

20 Q. Ms. Malone says that she's been practicing law
21 for 27 years. Did you hear that testimony?

22 A. I recall that.

23 Q. She said she has tried thousands and thousands
24 of cases.

25 A. I don't know if she said thousands.

1 Q. Hundreds, maybe I'm overselling that; tons of
2 cases.

3 A. She's experienced, yes.

4 Q. And at the last hearing the judge was asking
5 you some questions about you were over your head and
6 you were outmatched. Do you remember those
7 questions?

8 THE COURT: I don't think outmatched is
9 the point. The point was not outmatched, the point
10 was whether or not Mr. Radbil agreed, one, had he
11 done anything wrong by taking on this case with this
12 level of experience; and two, did he agree that he
13 was in over his head. It had nothing to do with
14 overmatched. So let's make sure that's clear. And
15 go ahead, if that's the question, let's hear the
16 answer again.

17 Q. (By Mr. Suazo) Okay. So you were in over your
18 head. Mr. Radbil, when Ms. Malone tried her first
19 case, you were, what, five years old?

20 A. I don't know how old I was.

21 THE COURT: This is really, really a waste
22 of time. Let's move off this, because I have some
23 questions for Mr. Radbil about that particular area,
24 but I want you to finish up your points.

25 MR. SUAZO: Sure. Sure.

1 Q. (By Mr. Suazo) During Mr. Meyers' testimony,
2 he said that it takes two to tango, and he made the
3 reference to Ms. Malone and to you having disputes.
4 Let me just ask, since we've gone over some of your
5 other cases on PACER, of all of your cases in PACER,
6 how many -- or what percentage do you say wound up
7 with you actually trying that case?

8 A. I -- I don't know.

9 Q. It was very few that went to trial out of all
10 of the cases that you have handled.

11 A. Yes.

12 Q. And have you handled multiple cases with
13 Ms. Malone?

14 A. I have, yes.

15 Q. Do they have a tendency to wind up being
16 contentious?

17 A. Yes. I think she mentioned that in the trial
18 transcript, actually.

19 Q. Have you won and lost cases against her?

20 A. Yes.

21 Q. Do you or Weisberg & Meyers have difficulty
22 working with Ms. Malone on some occasions?

23 A. I do.

24 Q. Can you think of an example in this case
25 involving a protective order?

1 A. Yes.

2 THE COURT: And we covered that last time,
3 as well. This was the protective order that was
4 faxed by Mr. Martin that the paralegal had given him
5 that had the wrong format that the two lawyers
6 agreed at some point.

7 All right, Mr. Suazo, what is the point?
8 I want to make sure we haven't had it before.

9 MR. SUAZO: Yes. The point I am trying to
10 make, Judge, is, a protective order was proposed,
11 and it's Radbil Exhibit-- well, a protective order
12 was proposed by Weisberg & Meyers for this case when
13 Weisberg & Meyers was producing documents.

14 On Exhibit 23, Radbil Exhibit 23, a
15 response letter is written by RAB. And they say,
16 I'm not signing the protective order. If you had
17 requested an m order from me before you spent --
18 before I spent two months trying to get documents,
19 before you filed a motion to compel, I might have
20 agreed.

21 THE COURT: Who is saying this?

22 MR. SUAZO: This is Ms. Malone. In other
23 words, the short shrift of it is, I'm not going to
24 sign a protective order.

25 Well, fast-forward a couple of months, it

1 comes time for RAB to produce documents. And
2 according to RAB or Radbil Exhibit 19, the e-mail
3 comes in from Ms. Malone to Dennis Kurz, and it
4 says: Somewhere along the way, a protective order
5 or a confidentiality agreement regarding production
6 of documents wasn't signed.

7 Now, this is maybe a week, couple of days
8 before a deposition is about to take place of RAB's
9 corporate rep. And so the point is, here is three
10 months earlier a protective order was proposed by
11 Weisberg & Meyers. It's not signed. And then three
12 months later we need a protective order in this
13 case. It's just an example of the contentiousness
14 between the two -- between the two sides.

15 THE COURT: Okay.

16 Q. (By Mr. Suazo) Mr. Radbil, did you want to add
17 something briefly to that dialogue?

18 A. Yes. The parties agreed to enter into a
19 protective order in the Rule 22(f) joint report.
20 Both parties signed that, and that was the original
21 agreement for the protective order. And I believe
22 in the letter that you referenced, written by
23 Ms. Malone, she said there wasn't any agreement for
24 a protective order at any time. Where, in fact, at
25 the outset of the case we contemplated such an

1 order.

2 Q. Okay. And so that's the point.

3 THE COURT: I will let Ms. Malone take
4 that up. You have about seven minutes left, so
5 let's move ahead.

6 Q. (By Mr. Suazo) Was there an issue also
7 involving the motion to compel that was filed by RAB
8 pretrial that bothered you to some extent?

9 A. Yeah, it bothered me greatly, because
10 Ms. Malone accused me of obstructing discovery to
11 the point that she was able to elicit no testimony
12 about Dr. White's health issues and mental anguish.
13 And we had a hearing, the motion was denied, and a
14 written order followed explaining that all questions
15 were answered fully.

16 Q. Okay. So let me ask you this: Radbil Exhibit
17 7 is a RAB Motion to Brief to Compel Discovery. It
18 says: During the deposition, plaintiff's counsel
19 prevented RAB's counsel from developing any
20 testimony, any testimony regarding plaintiff's
21 allegations of mental anguish, preexisting
22 conditions, and a diagnoses from his doctors.

23 Is that a true statement in that motion to
24 compel?

25 A. Yes.

1 Q. No, no, is that a true statement that
2 Ms. Malone was saying that she was denied any
3 ability to develop that testimony?

4 A. No, that's a false statement.

5 Q. And is the entire deposition before the Court,
6 Dr. White's deposition in one of the previous
7 filings that you made?

8 A. Yes, and I summarized it.

9 Q. And did the deposition actually end not on
10 direct, but direct, cross, and then redirect?

11 A. Yes.

12 Q. And was there plenty of mental anguish covered
13 throughout that deposition?

14 A. Yes.

15 Q. Okay. You mentioned to me -- and I want to
16 make sure real quick -- there was a brother that you
17 had, Aaron Radbil. Was there another brother that
18 you had?

19 A. Samuel Radbil.

20 Q. All right. I want to talk to you real briefly,
21 Mr. Radbil, about being late to court. If you
22 could, just briefly, and to the extent you can do
23 this very briefly, can you walk the Court through
24 the night before and then the morning wake-up, just
25 very briefly.

1 A. Yes. I was up late working, and I had eaten
2 something with lactose or cheese at the Aloft Hotel.
3 I am lactose intolerant or have lactose
4 malabsorption or some other things that I would
5 prefer if we could not have on the record. It was
6 really not an excuse for what happened. It was
7 unacceptable, and it showed lack of respect for the
8 Court, regardless, and I take full responsibility
9 for it.

10 THE COURT: I appreciate that, and I think
11 we have covered this a number of times. Mr. Radbil
12 has covered it, and I think this is exactly how he
13 has covered it before, and that's his position on
14 what happened.

15 Q. Just real quick, Mr. Radbil, when you woke up
16 that morning and realized you were late, what did
17 you do?

18 A. I called the Court.

19 Q. Did you get to the Court as soon as you could?

20 A. It's a block away, so I ran.

21 Q. Did you take a shower before you came, or did
22 you just immediately pop up and get over here?

23 A. I think I may have wet my hair.

24 Q. Were you just -- was your mind -- I'm looking
25 for the right word. The word I'm thinking is

1 freaking out, because that's probably what I would
2 be doing.

3 A. Yes, yes.

4 Q. Mr. Radbil, did you draft the Motion for
5 Summary Judgment and Response to the Motion for
6 Summary Judgment that this Court at least granted in
7 part, your motion?

8 A. Yes, I did.

9 Q. Did anyone at the law firm ever compliment you
10 on the amount of effort and the brief that you filed
11 with the Court that this Court granted?

12 A. I don't recall.

13 Q. Did you put a lot of effort into getting that
14 motion granted?

15 A. A tremendous amount.

16 Q. Mr. Radbil, would you agree with me that not
17 all lawyers are federal court trial lawyers?

18 A. Not all are federal court trial lawyers?

19 Q. Right.

20 A. Sure.

21 Q. You have transactional lawyers?

22 A. Sure.

23 Q. IP lawyers?

24 A. Um-hum.

25 Q. You might have a class action lawyer?

1 A. Um-hum.

2 Q. You might have all kinds of different,
3 researchers or writers. Do you understand that?

4 A. MDL lawyers.

5 Q. You might even have pretrial lawyers, lawyers
6 who do the workup and somebody who tries the case,
7 right?

8 A. Appellate lawyers; a wide variety, yeah.

9 Q. Okay.

10 MR. SUAZO: Judge, I think I'm probably
11 out of time. Am I?

12 THE COURT: You can ask a couple more
13 questions, and then you will be out of time.

14 Q. (By Mr. Suazo) Mr. Radbil, I'm just about out
15 of time. Something was brought up about the
16 Scarlott case, another case where a sanction order
17 was issued. I just want to ask a few questions
18 about it.

19 Did you have independent counsel at that
20 proceeding before Judge Hughes on the Scarlott case?

21 A. No.

22 Q. Did people take the stand and raise their right
23 hand and testify during that proceeding?

24 A. No, I don't believe so.

25 Q. As I appreciate it, part of the gist of what

1 the motion for sanctions was, was that the case
2 should have been dismissed against Nissan because
3 Nissan had claimed that they were not the ones that
4 were responsible for the lemon of the car, that
5 there was an after-installed mirror.

6 So let me just build a timeline. According to
7 PACER, plaintiff's original petition in that case
8 was filed on October 19th, 2009. Did you even have
9 a law license when that case was filed and signed up
10 by Weisberg & Meyers?

11 A. I don't think the Bar results had come out yet.
12 I certainly hadn't -- no.

13 Q. The case was removed on December 6, 2010. Had
14 you filed a designation of co-counsel in federal
15 court by the time the case was removed?

16 A. I'm not sure. I would have to defer to the
17 Court's records on that.

18 Q. According to PACER, your brother, Aaron, and
19 you appeared on November 22, 2007, after it was
20 removed.

21 A. Um-hum.

22 Q. Do you have any reason to dispute that?

23 A. No.

24 Q. On October 21, 2013, Mr. Kurz, who was
25 initially the lawyer on this case, was struck from

1 the case for having 55 or so cases in the Southern
2 District of Texas without a license or without
3 having been admitted to practice in the Southern
4 District of Texas.

5 A. Correct.

6 Q. Did you know anything about that in advance of
7 that?

8 A. No.

9 THE COURT: Was Mr. Kurz associated with
10 the Meyers firm?

11 MR. SUAZO: Mr. Kurz, I believe, was with
12 Weisberg & Meyers, but there was a disassociation
13 when a number of things happened.

14 THE COURT: But it is an example of
15 something going awry with a person who had been
16 associated with Weisberg & Meyers it sounds like.

17 MR. SUAZO: I don't necessarily want to
18 use the word awry.

19 THE COURT: Irregular.

20 MR. SUAZO: But the judge did issue an
21 order that struck Mr. Kurz from the case, and then I
22 think there was a disassociation while he was
23 attempting to correct that.

24 THE COURT: All right.

25 Q. (By Mr. Suazo) And then, Mr. Radbil, ten days

1 after that order came down against Mr. Kurz, did
2 Nissan file a motion for sanctions?

3 THE COURT: It might be helpful for me to
4 hear what you are saying if you focus on Mr. Suazo.

5 MR. RADBIL: I'm sorry.

6 Q. (By Mr. Suazo) Mr. Radbil, ten days after that
7 happened with Mr. Kurz, a motion for sanctions was
8 filed by Nissan. Does that timeline --

9 A. Sounds correct, yes.

10 Q. All right. Did you appear as attorney in
11 charge on that case on August 28th, 2012, or roughly
12 thereabouts, if that's what the record showed?

13 A. Yes, if that's what the record shows, I did.

14 Q. Okay. With the allegation being that the case
15 should have been dismissed earlier as a new lawyer
16 to the firm, someone who had been there one or two
17 years; a case that, according to the affidavit filed
18 with this Court or filed with the Court in the
19 Nissan case by Alex Weisberg, that you normally go
20 around dismissing cases that were signed up by named
21 partners in the firm.

22 A. I don't have that --

23 Q. Okay.

24 A. -- or I didn't.

25 Q. Is the sanctions order from Judge Hughes up on

1 appeal?

2 A. It is.

3 MR. SUAZO: Okay. Your Honor, I think I
4 have probably gone over the one hour. I appreciate
5 you giving me extra time.

6 THE COURT: I appreciate it, Mr. Suazo.
7 My questions and interruptions to you should not in
8 way indicate my regard for you and the thorough job
9 you have done and your representation of Mr. Radbil
10 here. All right?

11 MR. SUAZO: Thank you, Your Honor.

12 THE COURT: Thank you.

13 Ms. Malone.

14 THE COURT: Before we start, I do want to
15 take a two-minute break. Let's make it two, no more
16 than three, and we will start back up with the cross
17 of Mr. Radbil for another hour.

18 (Recess taken)

19 THE COURT: Ms. Malone.

20 MS. MALONE: Thank you, Your Honor.

21 MR. RADBIL: Is it okay if I take notes?

22 THE COURT: Take notes? I suppose so.

23 MR. SUAZO: Mr. Radbil, just keep them
24 very nominal if you do.

25 MR. RADBIL: Okay.

1 MS. MALONE: Thank you, Your Honor.

2 THE COURT: Ms. Malone.

3 **CROSS-EXAMINATION**

4 Q. (By Ms. Malone) Mr. Radbil, let's start
5 talking for a moment about the address that you
6 provided to the Court. I'm looking at the
7 transcript from the pretrial conference, Volume I of
8 the original White case.

9 Will you agree with me that the address that
10 you provided to the Court as the address for you for
11 service was 9330 LBJ Freeway, Suite 900, Dallas,
12 Texas. Would you like to see it, Mr. Radbil, to be
13 clear?

14 A. No. If it says that and I provided that, then
15 I agree with you.

16 Q. And you would agree with me that the local
17 rules require that you provide the address for
18 service -- service purposes that you intend to be
19 used in the case, correct?

20 A. Yes.

21 Q. And Mr. Radbil, the other address that appears
22 for you in the pleadings from time to time is an
23 address in Houston, correct?

24 A. Kirk Claunch's address also I believe appeared.

25 Q. I understand. I'm asking about you,

1 Mr. Radbil. The address that you provided would be
2 in Houston, correct? That's the one that you
3 usually use in federal court cases in Texas,
4 correct?

5 A. In Dallas, I believe we used the Dallas
6 address; in Houston, Southern District of Texas
7 cases, we used the Houston address I believe.

8 Q. And you would anticipate that attorneys from
9 the other side would serve documents on you at the
10 address you provide to the Court, isn't that
11 correct, Mr. Radbil?

12 A. Unless otherwise directed, yes.

13 Q. Unless you provide another address to the Court
14 as your service address, right, Mr. Radbil?

15 A. Or as a professional courtesy as otherwise
16 directed.

17 Q. And let's talk about that for a moment. In
18 addition to having a hand-delivered set of records
19 sent to your office before the February 15th date, I
20 also scanned them in to you at your request the
21 weekend before trial, did I not?

22 A. I don't know whether you scanned them in, and I
23 don't know -- February 15th? What date -- where are
24 you getting that date from? I'm not trying to avoid
25 the question, I just want to know the dates.

1 Q. That's fine, Mr. Radbil. I will back up.

2 We talked about with Mr. Meyers the
3 time-before-last that the Court order that you
4 proposed -- and I believe it's Document Number 70 --
5 with the Court, there is a proposed date for
6 exchanging exhibits for February the 15th. And then
7 there was a proposed date to provide the Court with
8 copies of the exhibits for the 20th.

9 Do you recall us talking about that with
10 Mr. Meyers?

11 A. No.

12 Q. All right. That's fine. I don't care.

13 Will you agree with me that, in addition to
14 having a hand-delivered set to you, that I sent you
15 e-mails that we discussed in your prior testimony
16 showing that I had also scanned in the exhibits and
17 sent them to you as well?

18 A. I recall you presenting e-mails. I don't
19 recall receiving e-mails nor any attachments to
20 them, which I think I explained last time also.

21 Q. And the fact of the matter is, when you arrived
22 at court on the -- day two of the jury trial -- day
23 one of the jury trial, second day after the pretrial
24 conference, you still did not have a copy of the
25 exhibits available to you or didn't bring them with

1 you even though I had scanned them in and
2 hand-delivered them to you, correct?

3 A. A copy of whose exhibits?

4 Q. My exhibits.

5 A. I believe I had a copy of your exhibits.

6 Q. I will read for you from the transcript, Volume
7 2, line 5:

8 "Mr. Radbil: What is the defense number for
9 November 4, 2011?"

10 And the Court said: "The record isn't going to
11 work if you all are conferring back and forth like
12 that."

13 Because you asked me, and I said to the Court:

14 "Ms. Malone: Your Honor, I don't think
15 Mr. Radbil brought my copy of exhibits with him. If
16 you will oblige me, I brought a spare, and I will
17 give it to him now in the courtroom."

18 Isn't that, Mr. Radbil, what happened?

19 A. No, I had a copy of your exhibits with me.

20 Q. You didn't bring them with you to the
21 courtroom, Mr. Radbil, I handed you a copy so you
22 could look at the exhibits in the middle of the
23 hearing. Isn't that correct, Mr. Radbil?

24 A. No, ma'am, that's not correct.

25 Q. Mr. Radbil, at the trial you only had a

1 briefcase. You didn't bring any notebooks or
2 anything else.

3 A. No, that's not correct.

4 Q. You brought something other than your
5 briefcase.

6 A. Yes.

7 Q. What did you bring, Mr. Radbil?

8 A. I believe I brought a box.

9 Q. Let's talk about your testimony regarding being
10 overworked.

11 A. Which testimony?

12 Q. Which came from the last trial -- I'm sorry --
13 was that, at the last minute Mr. Kurz left in August
14 of 2012 and left you with 100 cases, something to
15 that effect, correct?

16 A. I don't recall testifying that -- I disagree
17 that that was my testimony.

18 Q. Did you testify to the Court that you believed
19 that Mr. Kurz left in 2012, in August of 2012, and
20 around that time you then had approximately 100
21 trials that you were suddenly responsible for.

22 A. No, not trials.

23 Q. Cases.

24 A. Cases, yes.

25 Q. Yes. And that was your testimony, correct?

1 A. I don't recall.

2 THE COURT: Just a few minutes ago? Just
3 a few minutes ago? You don't remember that from a
4 few minutes ago?

5 MR. RADBIL: I don't.

6 Q. (By Ms. Malone) Mr. Radbil, you testified --

7 MS. MALONE: Your Honor, can I just show
8 him the transcript?

9 THE COURT: Yes. Just what transcript and
10 line and page.

11 MS. MALONE: Yes, ma'am. This would be
12 the Motion for Sanctions Hearing, Volume 4. I don't
13 have the transcript from a few minutes ago, but I
14 have the one from two weeks ago.

15 THE COURT: All right.

16 MS. MALONE: Beginning at line 236 -- page
17 236, line 18, flipping over to page 237, line 1.

18 THE COURT: All right. You may approach.

19 A. So I disagree with your characterization of the
20 testimony. This was on a temporary basis.

21 THE COURT: Okay. Why don't we have you
22 establish the point by reading from the transcript
23 slowly, please, Ms. Malone.

24 MS. MALONE: Yes, Your Honor.

25 THE COURT: This is from the last

1 hearing --

2 MS. MALONE: Yes, Your Honor.

3 THE COURT: -- of November the 6th.

4 MS. MALONE: It's Volume 4 of the
5 sanctions hearing, beginning page 236, line 18:

6 "Why did Mr. Kurz cease being an attorney in charge
7 of this case?"

8 "Answer: He quit.

9 "Question: When did he quit? Do you
10 recall roughly" -- I'm sorry. "Do you remember
11 roughly the approximate time frame?

12 "Answer: Yes. The approximate time frame
13 was when I appeared as counsel in this case.

14 "Question: Would that be sometime around
15 August of 2012?"

16 And then finishing on page 237, line 1:

17 "Answer: Yes."

18 THE COURT: And those answers are coming
19 from Mr. Radbil?

20 MS. MALONE: Yes. And the questioner is
21 Mr. Suazo.

22 THE COURT: Okay.

23 Q. (By Ms. Malone) Have I read that correctly,
24 Mr. Radbil?

25 A. Yes.

1 THE COURT: Just move up a little bit
2 closer to the microphone, please.

3 A. Yes.

4 Q. (By Ms. Malone) So your testimony last time
5 was that you became responsible for this file around
6 the time Mr. Kurz quit in August of 2012.

7 A. Yes.

8 Q. If you would look, please, at Defendant's
9 Exhibit Number 27. Do you have it? I think it's
10 the white one. Mr. Radbil, I believe it's the white
11 one, sir.

12 A. Thank you.

13 Q. Exhibit 7, please, sir.

14 A. I'm at Tab 7.

15 Q. Okay. And I believe that you and I are looking
16 at the fee invoices for Weisberg & Meyers.

17 A. Yes.

18 Q. Okay. And these are in reverse chronological
19 order, Mr. Radbil. And if you will flip to the last
20 page.

21 A. Okay.

22 Q. Page 140. And it shows this file was
23 officially opened on March the 17th of 2011,
24 correct?

25 Let me rephrase the question, Mr. Radbil. Will

1 you agree the first entry appears at March 17, 2011,
2 on invoices provided to us by Weisberg & Meyers?

3 A. As long as it's in chronological order, yes.

4 Q. These were the order they were given to me,
5 sir. They appear to be in reverse chronological
6 order, correct?

7 A. Well, there's March -- well, that's 2012. Have
8 you gone through them and confirmed that?

9 THE COURT: I think that wasn't the
10 question.

11 Mr. Suazo?

12 MR. SUAZO: I just want to know the dates.

13 MS. MALONE: 140.

14 MR. SUAZO: I only have -- I have two sets
15 of her exhibits, if I can find it.

16 MS. MALONE: I'm happy to let him share
17 with me, Judge.

18 MR. SUAZO: May I approach?

19 THE COURT: Yes.

20 MR. RADBIL: They do appear to be in
21 reverse.

22 MR. SUAZO: Can I stand over his shoulder?

23 THE COURT: I'm not comfortable with that.
24 Which exhibit book is this that we are talking
25 about?

1 MS. MALONE: It's from Regional Adjustment
2 Bureau's exhibits. It would be Exhibit 7. It's a
3 copy of the Weisberg & Meyers invoices.

4 THE COURT: You can use these, Mr. Suazo.
5 I will just hand them to you, Court's Exhibit 7.

6 MR. SUAZO: Thank you, Your Honor.

7 Q. (By Ms. Malone) Mr. Radbil, when we're looking
8 at Exhibit 7, the first date that appears, unless
9 there's some anomaly, is March 17, 2011.

10 A. First time entry, yes.

11 Q. Okay. And if you will flip over to page 138 --

12 A. Uh-huh.

13 Q. Yes? Are you with me?

14 A. I am.

15 Q. -- on September the 7th, 2011, there's an entry
16 for you appearing at that time, correct?

17 A. The entry reads: "Prepare e-mail to Robbie
18 Malone Re: Court order in-person conference
19 scheduling."

20 Q. Mr. Radbil, my question simply was: Is there a
21 reference to an entry by you on September 7th, 2011?

22 A. Yes, there's an entry with --

23 Q. I don't need to know what it says. I'm just
24 asking about the date, sir. Is that correct?

25 A. Yes.

1 Q. And there's also an entry on September the 8th,
2 2011, as well, correct?

3 A. Yes. "Review e-mail from Robbie Malone
4 concerning scheduling of the in-person conference."

5 Q. Thank you, Mr. Radbil. I really don't care
6 about the things, I'm just talking about dates. All
7 right?

8 Then there is an entry on September 8, 2011,
9 from Mr. Kurz, as well.

10 A. There is.

11 Q. Right above that, correct?

12 A. Um-hum.

13 Q. And Mr. Radbil, would it surprise you to learn
14 that, if you were to add up all of the time that
15 Mr. Kurz has been on this file, from its opening on
16 March the 17th until your first entry on
17 September 7, 2011, that he has spent only 2.1 hours.

18 A. No. This is very early in the case.

19 Q. Okay.

20 THE COURT: Okay. You answered the
21 question. Thank you. Go ahead.

22 Q. (By Ms. Malone) And Mr. Radbil, would you also
23 turn with me, please, to page 133 of that same
24 record.

25 A. Okay. I'm at 133.

1 Q. And if you will look at December 15th, do you
2 see there is a reference that you attended a
3 deposition for your client?

4 A. Yes.

5 Q. Okay. And will you also agree with me that on
6 that same page there are five entries for Mr. Kurz?

7 A. There's six.

8 Q. Okay. Six entries for Mr. Kurz, correct?

9 A. Um-hum.

10 Q. If you will look with me, please, on page 124,
11 and now we're in 2012, correct?

12 A. Yes.

13 Q. And will you agree with me that you see entries
14 there in June of 2012 for Dennis Kurz, correct?

15 A. You said three?

16 Q. Two; if there's three, there's three.

17 A. I'm sorry.

18 Q. Two for June of 2012.

19 A. Yes, that's correct, two for June of 2012.

20 Q. And if you will turn to page 122.

21 A. Okay.

22 Q. And you will see on the bottom of that page
23 that you actually took my client's deposition,
24 correct?

25 A. I did, yes.

1 Q. And so prior to Mr. Kurz leaving in August of
2 2012, you presented your client for deposition; you
3 took my client's depositions; and you appeared for
4 every hearing that occurred in this case. Isn't
5 that correct, sir?

6 A. I don't know if I appeared for every hearing.
7 I think that I did, yes.

8 Q. But you took the depositions.

9 A. Yes, I did take two depositions.

10 Q. Mr. Kurz did not take the lead on any
11 deposition or hearing prior to his leaving in August
12 of 2012, correct?

13 A. That's correct. Well, took the lead, I think,
14 on scheduling the initial conference; but yeah.

15 Q. Other than scheduling, you did all of the
16 substantive work. Is that fair, Mr. Radbil?

17 A. That is fair, yes.

18 Q. All right. And then as we looked at Exhibit 13
19 in our same matter, during this period of time where
20 Mr. Kurz was working on the file with you, if you
21 will look at our Exhibit 13, sir, Tab 13, you will
22 see that there are a number of -- there's a couple
23 of charts that indicate work that was being done by
24 Mr. Weisberg, Mr. Meyers, Mr. Ehrlich, and your
25 brother, Aaron Radbil, all partners with the firm

1 throughout this period of time, correct?

2 A. Throughout which period?

3 Q. The length of this time; the entirety of this
4 case, sir.

5 A. Are these taken verbatim --

6 Q. Yes, sir?

7 A. Then, yes, I agree with that.

8 Q. Do you agree that after Mr. Kurz left, you had
9 a number of conversations with your brother
10 regarding how to handle this case, who was a partner
11 at Weisberg & Meyers, according to your account
12 records.

13 A. Yes, of course.

14 Q. Okay. Now let's talk a little bit about the
15 disclosures in this case. Do you agree with your
16 counsel that if you don't put something in your
17 disclosures you are not allowed to put it into
18 evidence?

19 A. Would you mind clarifying the question, please?

20 Q. Do you agree with your counsel that if you do
21 not disclose something properly in responses to
22 disclosures you cannot use that as evidence in
23 trial?

24 A. There are circumstances which you can. For
25 example, in rebuttal, if you couldn't --

1 THE COURT: She didn't ask about rebuttal.
2 We all understand rebuttal is different; scheduling
3 order actually recounts that.

4 A. Then yes, I agree.

5 Q. (By Ms. Malone) Okay. If you would look with
6 me, Mr. Radbil, under Exhibit 1, will you agree with
7 me on page 3 of that exhibit, which is Dep App. 164
8 that you wrote, "Plaintiff claims actual damages" --
9 and I'm going to skip the formal reading of the
10 statute at this time -- "in the amount of \$1,500,
11 but reserves the right to disclose any additional
12 damages suffered should they become known."

13 Correct?

14 A. I did not write that.

15 Q. I didn't ask that. I asked you what the
16 disclosure said, Mr. Radbil.

17 A. I thought you asked if I wrote it.

18 Q. No, sir. I asked you if that's what the
19 disclosure said.

20 A. "Plaintiff claims actual damages under the
21 Federal Fair Debt Collection Practices Act at this
22 time in the amount of \$1,500 but reserves the right
23 to disclose any additional damages should they
24 become known. Plaintiff also claims statutory
25 damages recoverable under the FDCPA."

1 Q. I just asked you if it says that the amount of
2 \$1,500 reserves the right to disclose. Is that what
3 it says? That's as far as I need you to look at.

4 A. Under the rule of optional completeness --

5 THE COURT: That wasn't the question. Be
6 sure to answer the question.

7 Q. (By Ms. Malone) Is that what it says, Mr.
8 Radbil?

9 A. It does, and if I could read the rest.

10 Q. If you could turn back, Mr. Radbil, to
11 Defendant's Exhibit 7, which is Tab 7. I want you
12 to look at the second page of your invoices.

13 A. Certainly. Say that again. Defendant's App.
14 01?

15 Q. 08.

16 A. Got it.

17 Q. And do you see December 6th, and December 6th
18 there is an entry for both yourself and for your
19 brother referencing e-mails and discussing a
20 memorandum regarding actual damages from Dr. White.

21 A. Yes.

22 Q. And at the first hearing you testified that, in
23 fact, on December 6th, that you reviewed two memos
24 regarding damages from Dr. White, correct?

25 A. If I did, that was a mistake. There's two

1 memos.

2 Q. But you said at the last hearing that you
3 reviewed -- around December 6th, you reviewed two
4 memos from Dr. White regarding damages, correct?

5 A. Could you read the testimony, please?

6 THE COURT: Just refer him to the page, if
7 you have it.

8 Q. (By Ms. Malone) Okay. I believe that the page
9 begins on page 71, sanction hearing, and continues
10 on to page 73. And I believe he's discussing about
11 the two of them looking at the memos. That's
12 really -- I don't care if there's one or two. But
13 on December 6th, you looked at a memo discussing
14 damages according to your invoices, correct?

15 A. Yes, sir.

16 Q. Now, if you would look, please, in your
17 attorney's notebook that they provided to you there,
18 Radbil Exhibit Number 34, there should be an
19 affidavit for Dr. White.

20 A. Okay.

21 Q. And attached to it there is a memo dated
22 December 28th, 2012.

23 A. Yes.

24 Q. And you will agree with me this is the only
25 memo regarding damages from Dr. White that's been

1 produced as an exhibit in this case, correct,
2 Mr. Radbil? It's the only one attached to his
3 affidavit, correct?

4 A. What's the question, whether it's the only one
5 attached to the affidavit or produced in the case?

6 THE COURT: She said: "And you will agree
7 with me this is the only memo regarding damages from
8 Dr. White that's been produced as an exhibit in this
9 case." That's the question.

10 A. Based on the exhibits that I'm looking at, I
11 know they may have been supplemented. I think
12 that's accurate.

13 Q. (By Ms. Malone) Okay.

14 MR. SUAZO: Your Honor, I have the actual
15 memo, if it will speed it up.

16 THE COURT: The actual memo. All right.
17 Would you hand that to Ms. Malone?

18 MS. MALONE: I have never seen this, Your
19 Honor.

20 THE COURT: All right. Go ahead.

21 MR. SUAZO: It's an attorney-client
22 privileged communication to some extent, and I know
23 we have -- it's gone from Dr. White to the law firm.
24 And I know we've kind of gone through that privilege
25 to some extent, but that's -- I mean --

1 THE COURT: Okay. Let me just figure out
2 what this is.

3 Ms. Malone.

4 MR. RADBIL: It's --

5 THE COURT: Excuse me, Mr. Radbil, I don't
6 need anything from you.

7 MS. MALONE: Well, Your Honor --

8 THE COURT: What is going on, and what is
9 this?

10 MS. MALONE: It appears to me, although we
11 have never seen it before, it appears to be a
12 December 6th unsigned, unnamed e-mail. It just
13 says, "Dr. Mr. Radbil." And there's discussion of a
14 number of hard damages that his client is talking
15 about, none of which were disclosed to us: 20,000
16 plus added to my student loan; 5,000 for dropping a
17 teaching class, which would have increased my income
18 by 20,000; another discussion about -- a question
19 about his average psychology salary that he doesn't
20 get to make at 75,000.

21 THE COURT: Just so we can retrace this
22 for whoever might be reading this at some point,
23 this came from looking at -- starting along the line
24 of your questioning to discern how much time
25 Mr. Kurz versus Mr. Radbil actually spent on this

1 case. And now you are going through the billing
2 entries, and you're talking about specific
3 disclosures with regard to witnesses and evidence.
4 And I think you have referred him to a specific
5 something on a memo, on a certain date entry. What
6 entry was that?

7 MS. MALONE: Your Honor, we had finished
8 with the issue about Mr. Kurz.

9 I was going to their suggestion that the
10 disclosures did not need to be supplemented and
11 their argument that he had, in fact, given the
12 Court -- or given us a specific answer on actual
13 damages. And in response to that, Mr. Radbil's
14 counsel had filed an affidavit, which I believe is
15 Exhibit 34 of Mr. White that has attached a
16 December 28th memo.

17 We had never seen the December 6th memo,
18 which was clearly referenced in their notes. And
19 they are arguing that this 40,000 and 5,000 had been
20 discussed with Dr. White, and they were not going to
21 proceed against it. And now I'm given something
22 that they purport to be the December 6th memo from
23 Dr. White, which describes a whole lot of hard
24 damage numbers that were never disclosed to us.

25 THE COURT: Okay. Let's go back to what

1 the specific reference was in the evidence that you
2 were looking at that brought all of this up.

3 MS. MALONE: I was looking at two things.
4 I was looking at our -- the invoices that they
5 produced to us, which are Exhibit 7, which shows
6 that Mr. Radbil saw -- it says, "Received and
7 reviewed Dr. White's memorandum regarding actual
8 damages," which I am assuming this is what Mr. Suazo
9 has handed me is that memo.

10 In response to our questioning, Mr. Suazo
11 and Mr. Jefferson had produced an affidavit from
12 Dr. White. And the only damage document attached
13 was a damage document -- was a -- dated
14 December 28th. And since the invoices stopped on
15 December 12th, there was no reference to it in their
16 invoices.

17 So I wanted to know where it was, the
18 actual memo that he looked at that he says he
19 discussed with Dr. White. So now they have provided
20 it. And Judge, I'm not suggesting that Mr. Suazo or
21 Mr. Jefferson has done anything incorrect by any
22 means, but this certainly proves our point.

23 He was given a memo from his client that
24 details the 20,000 additional student loan, the
25 \$5,000 that he testified to from the stand, and

1 another 20,000 in actual income, as well as 30,000
2 in past due debt, and he comes up with a number that
3 he wants, which is 150,000.

4 THE COURT: Which would comport with
5 Dr. White's discussion with the Court while we were
6 waiting for Mr. Radbil that he did quantify the
7 damages.

8 Mr. Suazo, let me hear from you on this.

9 MR. SUAZO: Judge, the reason we gave the
10 memo right now is because the questioning seemed to
11 suggest that there were two time entries reviewing
12 two memos. And first of all, I wanted to let the
13 Court know there were two memos. There were, in
14 fact, two memos, and that was the other memo. There
15 wasn't billing going on for a memo that didn't
16 exist. That's number one.

17 The December 28th memo that's already part
18 of the record is substantially similar. So it goes
19 from December 28th to December 6th. They are very
20 similar. There may be some variation, but the point
21 of the memo is the same.

22 Both of these memos are attorney-client
23 privileged information. It's a little bit
24 irregular, I think, for me to just hand over an
25 attorney-client privilege, but we are kind of beyond

1 being regular, I guess, to some extent. So I just
2 turned that over, which, to some extent --

3 THE COURT: Which would waive it for that
4 particular document.

5 MR. SUAZO: Well --

6 THE COURT: It would.

7 MR. SUAZO: -- I'm afraid to get to that
8 point, but it seems that's where we've come. And
9 the accusation needed to be -- I guess Mr. Radbil
10 needed to defend himself with that memo. So to some
11 extent I am invoking the lawyer's ability to defend
12 himself.

13 THE COURT: I understand, but it does
14 waive the privilege as to that particular document.
15 And I don't see that we need to go down the road of
16 figuring out how far out that also waives it, but it
17 does waive it to that document.

18 So with that in mind -- Mr. Radbil,
19 please -- Ms. Malone, where are we with this?

20 MS. MALONE: Your Honor, the problem is
21 that the document they attached to Dr. White's does
22 no such thing. There is not one single reference to
23 a monetary amount anywhere in this document. It
24 does name some additional witnesses, which, again,
25 our point is he got it December 28th. He tells us

1 about it January the 18th, which is clearly not as
2 soon as he could. This is not the same memo at all.
3 I would be happy for the Court to compare them,
4 because they are not the same.

5 THE COURT: What now, at this point, are
6 you seeking to do?

7 MS. MALONE: Well, Judge, what I was going
8 to do, which this actually even bolsters my point,
9 was, I was going to actually at this point show the
10 Court what Mr. Radbil did in the trial transcript
11 with regard to actual damages. The argument or the
12 suggestion has been that he didn't -- he didn't
13 elicit or solicit any testimony related to that.
14 But I have from Volume 2, the trial transcript at
15 page 218, a question by Mr. Radbil: "Did the fact
16 that Regional Adjustment Bureau continued to call
17 your Simple Surrogacy employment telephone numbers
18 after you told them not to cause you to suffer
19 actual damages?"

20 And if the Court will recall, his
21 disclosure question was 1,500 in actual damages. We
22 now know there were discussions about a whole lot
23 more.

24 In response to that, their client said:
25 "Yes, it caused a domino effect in my life that

1 caused me to develop mental health symptoms I had
2 never experienced before, and it literally cost me
3 by adding exponentially to my debt with some
4 out-of-pocket costs."

5 THE COURT: Okay. All right. What I
6 would like to do before we go any further with this
7 is, Mr. Suazo, make your record, and I will move
8 ahead with questions of Mr. Radbil.

9 MR. SUAZO: Yes, Judge. We gave the memo
10 for the limited purpose of establishing that there
11 was the existence of a memo. I think the point --
12 to a large extent, we have covered this. We had a
13 lot of argument at the last hearing, where we -- I
14 think we have already plowed this ground. Because
15 our position was, there was not a question during
16 those 22 pages of examination of Dr. White where
17 Mr. Radbil solicited damages testimony or asked for
18 it in opening or asked for it in close.

19 So I still -- the fact that someone gives
20 you a memo outlining some damages if they are not
21 being sought, I don't necessarily think triggers a
22 disclosure obligation if they are not being sought.

23 THE COURT: Well, I know that's the
24 argument, and I haven't decided that issue yet. I
25 think the question now is, can she now go forward

1 with this memo, and I think she can. Understand
2 how -- I think the context is clear now as to how
3 that came up and how it's been turned over to them,
4 but I think that Ms. Malone can use it.

5 How and what weight I'm going to give
6 it -- do you mind, Mr. Radbil, please -- how and how
7 much weight I'm going to give it, I haven't decided
8 yet. But I do think that she gets to use it and
9 keep it, obviously make a copy and give you the
10 original back. But I would like to go ahead then.

11 MS. MALONE: Your Honor, under that
12 context, then, I would move to add this as a late
13 exhibit. I think we are at Exhibit 44, so it would
14 be 45.

15 THE COURT: I'm going to admit it as
16 Exhibit 45 for RAB. I understand that Mr. Suazo
17 objects to that.

18 MR. SUAZO: Yes, Your Honor.

19 THE COURT: And I understand and note your
20 objection for the record.

21 MR. SUAZO: Thank you.

22 (RAB Exhibit 45 admitted into evidence.)

23 Q. (By Ms. Malone) Mr. Radbil, you are familiar
24 with the December 6th memo you heard us discussing
25 from your client?

1 A. I am.

2 Q. And Exhibit 45, although it doesn't have
3 Dr. White's name on it, is, in fact, the memo that
4 we are discussing; is that correct?

5 A. May I see the memo?

6 THE COURT: Go ahead.

7 A. Yes. And --

8 MS. MALONE: That's all my questions.

9 THE COURT: That is the memo?

10 THE WITNESS: It is, yes.

11 THE COURT: That's 45 of RAB.

12 MR. RADBIL: May I add?

13 THE COURT: I will let you add if your
14 attorney wants to ask you a question in a minute,
15 very limited, but right now I want to go ahead with
16 this.

17 MR. RADBIL: It just had to do --

18 THE COURT: No, I want to go ahead with
19 this, Mr. Radbil.

20 Q. (By Ms. Malone) Mr. Radbil, will you agree
21 that there are a number of dollar amounts
22 specifically listed in this memo by Dr. White?

23 A. I do, yes.

24 Q. Will you agree that those numbers were never
25 disclosed to the defendant?

1 A. I agree.

2 Q. And will you agree, sir, that in your
3 testimony -- or your questioning of Dr. White, that
4 you asked him at page 218, beginning at line 12:
5 "Did the fact that Regional Adjustment Bureau
6 continued to call your Simple Surrogacy employment
7 telephone numbers after you told them not to cause
8 you to suffer actual damages?" Correct?

9 A. Yes, which matches up with the last paragraph
10 of --

11 Q. Did I also -- my question was, did you say
12 that, sir? Yes.

13 THE COURT: Did you say it, Mr. Radbil?
14 Just say yes or no if you can answer it yes or no.
15 Did you say it?

16 MR. RADBIL: Frankly, I can't recall
17 exactly what you just said. So say it one more
18 time, please, and I will answer yes or no.

19 (Record read by the Court as follows:)

20 THE COURT: "Will you agree that there are
21 a number of dollar amounts specifically listed in
22 this memo by Dr. White?"

23 Will you agree with that?

24 MR. RADBIL: Yes.

25 THE COURT: "Will you agree that those

1 numbers were never disclosed to the defendant?"

2 MR. RADBIL: Yes.

3 THE COURT: "And will you agree, sir, that
4 in your testimony -- or your questioning of Dr.
5 White, that you asked him at page 218, beginning at
6 line 12: 'Did the fact that Regional Adjustment
7 Bureau continued to call your Simple Surrogacy
8 employment telephone numbers after you told them not
9 to cause you to suffer actual damages?'"

10 MR. RADBIL: Actual damages, yes.

11 Q. (By Ms. Malone) And will you agree that
12 Dr. White answered: "Yes, it caused a domino effect
13 in my life that caused me to develop mental health
14 symptoms I had never experienced before, and it
15 literally cost me by adding exponentially to my debt
16 and out-of-pocket costs."

17 Did your client answer that question that way?

18 A. If that's what the transcript says, yes.

19 Q. It is?

20 A. Then, yes.

21 Q. Do you recall that, Mr. Radbil? Independently
22 from the record, do you recall it?

23 A. Somewhat, yes; not the exact words.

24 Q. Will you agree that in your closing, at page 63
25 in Volume 3, you said to the jury: "And I think the

1 evidence shows there are legitimate, actual damages
2 in this case." Isn't that correct?

3 A. Yes.

4 Q. Okay. Now, Mr. Radbil, let me just switch a
5 little bit. You wrote the briefing in response to
6 our Rule 37 motion?

7 A. I did.

8 Q. And in that motion -- we talked a little bit
9 about it last time. But at document 125, which is
10 Plaintiff's Response to Defendant Regional
11 Adjustment Bureau Inc.'s Motion and Brief for FRCP
12 Rule 37 Sanctions, will you agree that in this
13 briefing you do not say, this is something our
14 client came up with and we told him not to do it?

15 A. I need to review a copy. I know which page you
16 are talking about, but I don't know the wording, and
17 I am hesitant to answer the question yes or no.

18 MS. MALONE: Your Honor, may I approach
19 him to show him page 12?

20 THE COURT: You may.

21 MR. RADBIL: Thank you.

22 THE COURT: And just so we're clear, it's
23 page 12 of the Rule 37 motion filed by you.

24 MS. MALONE: Yes. I think it's document
25 125, Your Honor.

1 THE COURT: Thank you.

2 Q. (By Ms. Malone) Your answer, Mr. Radbil?

3 A. Can you -- if the language that you highlighted
4 there is the language, yes, I wrote that.

5 Q. Okay. My question was: Will you agree that
6 there's no reference in here to this being a rogue
7 answer or something your client said even though you
8 had told him that you weren't going to ask for it.
9 Isn't that fair?

10 A. I didn't look for that.

11 Q. On this page, sir.

12 THE COURT: On this page of what, just so
13 we are clear.

14 MS. MALONE: Document 125 of the motion
15 for -- your response to our Rule 37 sanctions
16 motion.

17 MR. RADBIL: I didn't read the entire
18 page.

19 THE COURT: Take it back up there.

20 MR. RADBIL: And I'm limited to this page?

21 MS. MALONE: That's the page I'm asking
22 you about, Mr. Radbil.

23 MR. RADBIL: Okay. What was the question
24 again?

25 Q. (By Ms. Malone) You agree that this page --

1 may I have it back? This page does not contain any
2 reference to this being a -- the \$40,000 being a
3 discussion that you had with your client that you
4 told him wasn't coming into evidence, anything along
5 those lines, would you agree?

6 A. Right. It talks all about it being privileged
7 and not ordinarily discoverable absent showing a
8 substantial need to discover the information.

9 Q. Mr. Radbil, are you seriously suggesting to the
10 Court that saying something is a privileged document
11 is the same thing as saying that this was your rogue
12 client's answer to a question in court and you had
13 no idea they were going to say, are you seriously
14 suggesting that to the Court?

15 A. No, I don't equate those two things.

16 Q. Okay. So there is nothing on this page that
17 said, this is something our client came up with and
18 we told him it was not going to be admissible and he
19 did it on his own. Is that fair?

20 A. On that page?

21 Q. Yes, sir.

22 THE COURT: Right. Put the hands down.
23 Put the hands down and answer the question.

24 A. No. But our client --

25 Q. (By Ms. Malone) Thank you, Mr. Radbil.

1 And would you agree with me, sir, that
2 Dr. White testified to the Court that he had been
3 assured that his claims for actual damages would be
4 admitted into evidence?

5 A. For actual damages.

6 Q. Right. And you will also agree with me,
7 Mr. Radbil, that, in fact, the affidavit you have
8 for Mr. White merely says that you are not going to
9 ask the jury for a specific dollar amount; it does
10 not reference what evidence will be offered into the
11 case. Isn't that correct?

12 A. His affidavit, yes, that's correct.

13 Q. And let's look at this again from your attorney
14 records. We went through this before, Mr. Radbil --
15 Mr. Radbil, is there something, funny, sir?

16 A. No, I am waiting to offer an exhibit in
17 rebuttal that will prove the opposite of what you
18 are driving at.

19 THE COURT: Why don't you go on to another
20 question, Ms. Malone.

21 MS. MALONE: Sure.

22 Q. (By Ms. Malone) Mr. Radbil, do you agree that,
23 according to your testimony, somewhere in January of
24 2012 that someone in your office decided this case
25 following your client's deposition was --

1 THE COURT: Slow.

2 Q. (By Ms. Malone) -- was worth \$8,500?

3 A. That someone in my office decided it was worth
4 \$8,500? I don't know.

5 Q. Do you agree that that's what your testimony
6 has been, that that was the demand that was made by
7 your office in January of 2012?

8 A. Yes.

9 Q. And you will agree that the summary judgment
10 ruling occurred in November of 2012.

11 A. Sure, yes.

12 Q. And that following that ruling, you will agree
13 that we looked at e-mails from Mr. Meyers that
14 indicated he valued the case at \$65,000, correct?
15 That's the demand he made for settlement, correct?

16 A. I don't know how he valued the case, but he
17 made a demand; I think it was in that amount.

18 Q. And do you agree with me, sir, that the only
19 thing that happened between the demand by Mr. Meyers
20 of 65,000 and the mediated settlement conference
21 were the December 6th memo and the December 28th
22 memo from your client.

23 A. We communicated.

24 Q. Not about settlement. I'm talking about
25 substantive about the case.

1 A. I think we communicated.

2 Q. Mr. Radbil, did anything else change the value
3 of the case between November 28th and the mediated
4 settlement conference with the exception of your
5 client's memos regarding damages?

6 A. Between which dates?

7 Q. November 28th and the mediated settlement
8 conference in February of 2013.

9 A. Yes, our client's memos on actual damages.

10 Q. Would that be consistent, and would you agree
11 that you believe that those memos regarding actual
12 damages were to help guide you at the mediated
13 settlement conference?

14 A. They served as -- well, I asked Dr. White to
15 think long and hard about what he thought he
16 deserved in the real world in terms of actual
17 damages. And I also asked him to produce any
18 evidence he had of any economic damages, to which he
19 replied that he could not find any evidence
20 supporting the additional money that was added by
21 the nonparty, Texas Guaranteed, after searching.
22 But nonetheless --

23 Q. That's another memo you haven't provided to us,
24 right, Mr. Radbil?

25 A. No, that's an e-mail.

1 Q. Mr. Radbil, will you agree with me at the
2 mediated settlement conference that your demand was
3 up over \$100,000?

4 A. Yes.

5 Q. All right. Let's switch gears slightly. I
6 want to talk to you about the expert witnesses.

7 You said that there was a motion you filed
8 where you said there was -- none of the experts
9 would be -- none of the individuals would be expert
10 witnesses, correct?

11 A. Yes.

12 Q. If you would look at Exhibit 7, Tab 7 --

13 A. Okay.

14 Q. -- page 109.

15 A. Got it.

16 Q. And do you see December 3rd, Sonya Rodriguez
17 references reviewing file regarding experts,
18 correct? Review file for expert's use, correct?

19 A. What's the date?

20 Q. December 3rd.

21 A. E-mail to attorneys. Brief status. Re:
22 nonparty trial subpoenas. Do we need them? Please
23 provide names. Review file for any experts used.

24 Q. Okay. Turn to page 111.

25 A. Okay.

1 Q. September 21st, 2012.

2 A. Um-hum.

3 Q. Melissa Norton, do you see it?

4 A. Um-hum.

5 Q. Yes, sir?

6 A. Yes.

7 Q. Do you see it, Mr. Radbil?

8 A. There are two entries with Melissa Norton --

9 Q. I'm talking about the first one, sir.

10 A. I see both of them, yes.

11 Q. On the first one, you see the third line down,
12 it says, "Prepare letter to expert Re: date of
13 trial." Correct?

14 A. Yes.

15 Q. Mr. Radbil, let's change gears just a little
16 bit.

17 You were at the hearing, the Scarlott hearing?

18 A. Yes.

19 Q. And your client, Ms. Scarlott, was present?

20 A. She was.

21 Q. And did Judge Hughes at that hearing tell you
22 that he found your practice to be incompetent?

23 A. I don't recall. I believe that he insulted me
24 in numerous ways.

25 Q. Did he say you were incompetent?

1 A. I believe so.

2 Q. Did he say that you had a lack of understanding
3 throughout the entire case?

4 A. I don't know whether he used those exact words,
5 but, again, he insulted me quite thoroughly.

6 Q. Did he say you were unteachable?

7 A. He did say that, yes.

8 Q. Did he tell you that he found that instead of
9 helping your client, you chose to file a bunch of
10 pleadings hoping to get money, but what you really
11 wanted to do was get some money for Noah Radbil?

12 A. He did say that, I specifically recall.

13 Q. Did he tell you that you have been gratuitously
14 litigious and persisted wrong headily in saying that
15 because your thoughts are pure your deeds are purer?

16 A. I recall those words. If the order is correct,
17 I'm not sure.

18 Q. Do you recall he also told you that you have
19 consistently taken action to impose the cost of your
20 inability to do your job on the defendant and
21 others?

22 A. Yes.

23 Q. Did he say that you conducted no reasonable
24 investigation into the case?

25 A. No.

1 Q. Did he say you exhibited gross incompetence in
2 serving the wrong party?

3 A. I disagree with that.

4 Q. I'm not asking if you disagree, I'm asking did
5 he say it, Mr. Radbil?

6 A. I defer to the transcript; but yes, he said
7 many, many bad things about me.

8 Q. Did he say that your deeds and performance are
9 defective?

10 A. I don't recall, but --

11 Q. Did he say that every time one of your
12 arguments turns out to lead to a dead end, then you
13 change it?

14 A. He may have, yes.

15 Q. Did he say that both you and your firm were
16 unfocused and unprincipled?

17 A. I don't recall that.

18 Q. Did he tell you that you illustrate your
19 inability to behave like a lawyer?

20 A. Yes, he did say that.

21 Q. And on the record, did Mr. Meyers indicate to
22 the Court that he would, as the firm, would take
23 care of the 195,000-dollar sanction; they would be
24 responsible for it, not you?

25 A. I don't think there was a 195,000-dollar

1 sanction.

2 Q. All right. Mr. Radbil, did Mr. Meyers say that
3 the firm would be responsible for whatever sanction
4 ultimately was found against in the case?

5 A. I don't recall whether he said that on the
6 record.

7 THE COURT: Where did you get that from?

8 MS. MALONE: The transcript, Your Honor.

9 THE COURT: You don't remember if he said
10 that?

11 MR. RADBIL: No. I remember Judge Hughes
12 saying that --

13 THE COURT: The question is, what do you
14 remember Mr. Meyers saying?

15 MR. RADBIL: I don't remember Mr. Meyers
16 saying that on the record.

17 Q. (By Ms. Malone) Did Judge Hughes say:
18 "Mr. Radbil, I have been counseling you all along
19 that you have a method of operation and you're
20 perfectly happy with it. You see nothing wrong with
21 it. You think it's bizarre that people are upset
22 that they are sued when they're the wrong party or
23 when the right party is sued three and a half years
24 after the incident on a two-year limitation and they
25 are perplexed when you won't drop it. And you see

1 nothing wrong with not dropping a party whom you
2 have sued too late, that it's just -- it's confusing
3 to you."

4 Did Judge Hughes say that?

5 A. Yes, he did say that.

6 Q. Did Judge Hughes say: "You're being sanctioned
7 for abusive prolongation of litigation, of tendering
8 an expert late in the case who was unqualified for
9 reason of his association with the firm and because
10 he failed to consider alternatives to his preferred
11 theory -- that makes him an advocate, not an
12 evaluator -- for all of the other things that you've
13 done in this case that made it take way too long,
14 the evolving nature of every claim, every argument.
15 It's not just today that you won't stick to the
16 point."

17 Did Judge Hughes say that?

18 A. Yes, he did.

19 Q. Mr. Radbil, do you believe that you did
20 anything wrong in this case, in the trial of this
21 case, other than be late for court?

22 A. Which case?

23 Q. This case.

24 A. Wrong? What do you mean by wrong?

25 THE COURT: What do you think it means?

1 MR. RADBIL: I think it means --

2 THE COURT: Sit up to the microphone.

3 MR. RADBIL: I think if the question means
4 bad faith, I can confidently say, no, I did not
5 litigate in bad faith. If the question is, are
6 there things I could have done differently,
7 certainly. I know that it was wrong to be late for
8 trial.

9 THE COURT: You made your point. You made
10 your point.

11 Ms. Malone, what's your next question,
12 please?

13 Q. (By Ms. Malone) Mr. Radbil, do you believe you
14 just made a mistake in the handling of this case?

15 A. Which part of the case?

16 THE COURT: Any part of the case.

17 MS. MALONE: Any part of it.

18 THE COURT: This is our sixth hearing on
19 your conduct; any part of it, Mr. Radbil.

20 A. Yes, I think that I am not perfect. And I have
21 made mistakes in good faith, probably several
22 mistakes in good faith throughout the course of the
23 trial, as I'm sure Ms. Malone has.

24 Q. (By Ms. Malone) What mistake did you make,
25 Mr. Radbil?

1 A. I made the mistake of relying on a court's
2 order erroneously. I made a mistake of making a
3 pretrial argument that the judge was not receptive
4 to, and I should have picked up on that. I made the
5 mistake of not pursuing sanctions against you
6 before -- when you filed a motion to compel arguing
7 that you had --

8 THE COURT: Okay. We're getting the
9 picture here, Mr. Radbil. I think the answer is,
10 you don't think you did anything wrong.

11 What else do you have, Ms. Malone?

12 Q. (By Ms. Malone) Mr. Radbil, do you believe
13 that you have not -- that you are untrained or you
14 have not been trained sufficiently to handle federal
15 court matters?

16 A. No, and I would like to go back if I could.

17 Q. Do you believe, Mr. Radbil, that you have been
18 unsupervised --

19 THE COURT: No, you can't go back. Answer
20 the question.

21 Q. (By Ms. Malone) Do you believe you were
22 unsupervised in the handling of the White case?

23 A. At times, yes.

24 Q. Do you think that -- how were you unsupervised,
25 Mr. Radbil?

1 A. It wasn't so much a lack of supervision as a
2 lack of support.

3 Q. Clerical support, Mr. Radbil, that's the only
4 thing that you think was a problem for you?

5 A. I didn't say that.

6 Q. Okay. Do you believe that this simply wasn't
7 your best day at trial?

8 A. If you're implying that that's the only thing
9 that I think I did wrong or could have done
10 differently, the answer is no.

11 Q. Do you think you were in over your head,
12 Mr. Radbil?

13 A. Absolutely not.

14 Q. Do you believe that you did not understand what
15 Judge Boyle asked you when we were talking about the
16 sanctions, about the 40,000-dollar disclosures, when
17 we had the Rule 37 sanction in trial?

18 A. I don't understand the question.

19 Q. Well, your attorney suggested last time that
20 you misunderstood the question the judge asked you
21 when she was asking you where you had disclosed the
22 40,000 and 5,000.

23 A. Sure.

24 Q. Do you believe that you just didn't understand
25 what Judge Boyle was asking you?

1 A. Yes.

2 Q. Do you believe -- but you didn't put that in
3 your motion, in your response to the motion, did you
4 Mr. Radbil?

5 A. You only let me look at one page.

6 Q. Mr. Radbil, you didn't put it in your motion.
7 You know what you wrote, don't you, sir?

8 A. I don't recall the entire motion.

9 Q. All right. Mr. Radbil, do you believe that you
10 properly and timely supplemented materials pretrial?

11 THE COURT: Yes or no.

12 A. With regard to everything except witnesses,
13 which were disclosed as soon as practical and were
14 conceded to be excused at trial, we expected those.

15 Q. (By Ms. Malone) Do you believe you owe Judge
16 Boyle an apology?

17 A. Yes, I do.

18 Q. Do you think you have given her one?

19 A. I think I have apologized on several occasions.

20 Q. Do you think telling a judge that she's smart
21 and you appreciate her career choice is an apology
22 for your conduct in court?

23 A. No. And if you don't think that I have, Judge
24 Boyle --

25 THE COURT: I understand, Mr. Radbil. I

1 think it's just a very, very basic way of thinking
2 that you have persisted in that has absolutely no
3 willingness or acknowledgment or character, if you
4 will, to admit what happened here. That's all I
5 need to hear.

6 MR. RADBIL: I just --

7 THE COURT: No. Ms. Malone, we are
8 finished, and I would like to get my Exhibit Number
9 7 back. I have heard all the testimony I need to
10 hear. If I decide that Dr. White is an appropriate
11 witness in the case, I will notify everyone at the
12 time and give you a chance. I don't right now think
13 that. I would like to Exhibit 7 back at this time,
14 please.

15 You can step down, Mr. Radbil.

16 MS. MALONE: Your Honor, my apologies. I
17 don't have an exhibit sticker for -- this is the
18 one -- the December 6th one that came in late.

19 THE COURT: That's Exhibit 45. Just mark
20 it with a pen.

21 We are going to break until 1:15, and then
22 I'm going to hear, as I understand it, three
23 arguments of no longer than 30 minutes each, and
24 then we will be done.

25 And then I will instruct you all that the

1 Court will go back and review all of this and write
2 an opinion on it. I don't want any further briefing
3 or filing without leave of Court. We will see you
4 back here in about an hour and ten minutes.

5 MS. MALONE: Judge, I have one correction.

6 THE COURT: Ms. Malone?

7 MS. MALONE: Since we are the movant,
8 normally we would save five minutes for rebuttal. I
9 don't mind, if you want us to say we are doing 30
10 minutes only, we will. If not --

11 THE COURT: I would just as soon, since
12 you are the moving party, I think I have all of the
13 moving part of this. I would like them to go and
14 defend the situation, and then you finish with
15 rebuttal. Essentially, the opening is just to
16 recount what the evidence showed. I have been here,
17 and I know what it showed.

18 We will see you back in one hour and ten
19 minutes.

20 (Recess taken.)

21 THE COURT: All right. As I said, we are
22 going to have 30 minutes, and I believe we have
23 three people arguing. The defense side, I don't
24 know how you want to split this up or who is going
25 to argue. And I say the defense side, and I'm

1 talking about as far as the sanctions motions go.

2 Mr. Jefferson? Mr. Suazo?

3 MR. JEFFERSON: Your Honor, I'm going to
4 let Mr. Suazo take a break, and I'm going to do the
5 close. But am I to understand that each of us get
6 30 minutes, or is that 30 --

7 THE COURT: 30, 30, and 30.

8 MR. JEFFERSON: Okay. We have talked
9 about it, and I don't know that we have a particular
10 preference. Mr. Meyers tells me that he's only got
11 about five minutes or so. If that's the case, I
12 would prefer he goes first, but it's your call.

13 THE COURT: That's fine. That's fine. I
14 didn't have a set method of who goes first. I just
15 don't see any need to have an opening and rebuttal.
16 After all of this, I think we are just fine with
17 letting RAB make their arguments as a rebuttal
18 argument and let the plaintiff/nonmoving parties on
19 the sanctions motion go first.

20 MR. JEFFERSON: And, Your Honor, I think
21 Mr. Suazo has some housekeeping as a result of the
22 last exhibit that the Court left in. I think for
23 optional completeness, there were some other e-mails
24 pertinent to that.

25 THE COURT: And before you even address

1 that with me, Ms. Malone has to see what you will be
2 handing to me.

3 MR. SUAZO: Yes.

4 (Pause in the proceedings; discussion held
5 off the record.)

6 THE COURT: We are going to go off the
7 record until after you all have had a chance to
8 address this.

9 (Pause in the proceedings.)

10 MS. MALONE: Judge, obviously we are going
11 to have a general objection about the tardiness of
12 this, because this has been in their possession all
13 the time. But understanding the Court's prior
14 instruction that you are going to decide what to
15 consider, I do feel like I need to protect my
16 record. This is a document they have had all along.
17 I have just seen it for the first time, and the
18 evidence is already closed, but I understand the
19 Court will probably consider them.

20 THE COURT: Tell me what it is, Mr. Suazo,
21 and we will go from there.

22 Come up to the microphone.

23 MR. SUAZO: This relates to the memorandum
24 that was just furnished today.

25 THE COURT: Which is now RAB 45.

1 MR. SUAZO: RAB 45. And this is
2 continuation of a discussion on that memo. So it's
3 optional completeness.

4 And the other one is an e-mail that
5 authorizes the use of the memo so that Mr. Radbil --
6 we're not being viewed as going out of the realm of
7 waiving the attorney-client privilege. There was
8 permission by Dr. White. And so we have that e-mail
9 and then a continuation.

10 THE COURT: Permission by Dr. White. And
11 I understand that that is certainly something that
12 you feel most comfortable having. It doesn't mean
13 that, although we are long done with this, that he
14 hasn't somehow waived it by virtue of waiving it
15 otherwise, but I don't think we are going to --
16 Mr. Meyers, are you all right?

17 MR. MEYERS: Yes, Your Honor.

18 THE COURT: I don't think we are going to
19 get into any more evidence, so I don't think that
20 will become an issue. I just want to make sure that
21 I haven't foreclosed that possibility should it come
22 up again in the future.

23 MR. SUAZO: Okay.

24 THE COURT: So those will be Radbil
25 Exhibits --

1 MR. SUAZO: I think it would be the last
2 Radbil exhibit, which I think will be Radbil
3 Exhibit, I believe, 38.

4 THE COURT: 338 or 38?

5 MR. SUAZO: Just 38.

6 THE COURT: I thought that's what you
7 said. Okay. All right.

8 With the understanding that Ms. Malone has
9 objected to these as not having seen them and
10 untimely and for all those reasons, I'm going to
11 admit, without determining at this point whether or
12 not I'm going to consider it, Radbil 38.

13 (Radbil Exhibit 38 admitted into evidence.)

14 MS. MALONE: I was just waiting for a
15 copy.

16 MR. SUAZO: Yes.

17 MS. MALONE: That's all.

18 MR. SUAZO: Judge, I have it scribbled on
19 the Radbil Exhibit 38 just so the court reporter
20 will know that she may need to scribble that on
21 there.

22 THE COURT: All right. With that, both
23 sides ready?

24 Mr. Meyers, you have 30 minutes. It's
25 2:25 -- or 1:25.

1 MR. MEYERS: I apologize, Your Honor, for
2 disrespecting the bench after the first hearing. It
3 was a human reaction to being called a liar and a
4 fraud. I can't take it back. I can't undo it. I
5 can simply bear the consequences of having done so.

6 And you know, Judge, I just, with all due
7 respect, momentarily forgot that the Court is human
8 too. And as the Court considers my punishment for
9 my transgression, I ask the Court to consider, at
10 least as partial punishment, the fact that a lot of
11 horrible things have been said about me in the
12 courtroom and the reverberating effect of that and
13 all the horrible things that are now being said
14 about me outside the courtroom, just a partial
15 punishment.

16 When I first appeared at the hearing,
17 Judge, I had two objectives in mind: One was to
18 help defend Mr. Radbil against Ms. Malone's
19 allegations; and the other was to defend
20 Weisberg & Meyers against Ms. Malone's allegations.
21 If I had to do it all over again, I would have never
22 walked into the courtroom. But like I can't take
23 back my immature response to being called a liar and
24 a fraud, I can't take back that I put my firm and
25 myself square in the middle of these things. All I

1 can do, again, is bear the consequences.

2 And the consequences, Judge, at least some
3 of the consequences, are that I am now going to
4 begin winding Weisberg & Meyers, which I've
5 obviously devoted my life to since 2006. I have
6 never wound down a law firm, Judge; I don't know a
7 timeline, I don't know what it takes. But after
8 wrestling with the decision every day and night
9 since the last hearing, I have absolutely,
10 positively decided to do this and to devote the
11 remainder of my firm's resources towards honorably
12 concluding the representations that we currently
13 have. Once that's done, I will close
14 Weisberg & Meyers forever.

15 And handling these cases, Judge, this
16 remaining, I don't know, 150 cases or so, along with
17 vetting issues raised here to the Arizona Bar, the
18 Texas Bar, and, to the extent necessary and with all
19 due respect to the Fifth Circuit, that's going to
20 consume all of my energy for, I'm sure, at least the
21 next year. So while I wind down the firm, Judge,
22 Weisberg & Meyers will engage no new clients and
23 file no new lawsuits in 2014. And once this is
24 done, it won't be a viable entity, and it will be
25 closed forever.

1 I beg you to consider that, Judge, again,
2 just as partial punishment for my transgression, the
3 fact that I'm going to have to close the business
4 and law firm that I have devoted my blood, sweat,
5 and tears to since 2006.

6 As to the substantive matters, Judge, I'm
7 going to rest on the evidence that has been
8 submitted. This is a closing argument; it's not
9 evidence, and I am going to rest on the actual
10 evidence. My silence, Judge, is not acquiescence to
11 anything that's been said. It's not a concession of
12 wrongdoing or liability. It is a concession that my
13 spirit is beaten. And as you consider my remaining
14 punishment, Judge, I beg for your mercy in
15 considering what I have just said.

16 Thank you.

17 THE COURT: Thank you, Mr. Meyers.

18 Mr. Jefferson.

19 MR. JEFFERSON: May it please the Court,
20 Counsel.

21 Your Honor, thank you for the opportunity
22 to speak before you on behalf of Mr. Radbil. You
23 know, this matter has become kind of like a
24 stepchild to me. I didn't bring it into this world,
25 but I have been asked to see it through. And in

1 that context, I appreciate the Court's time and
2 attention to my remarks.

3 And as I was thinking about how I could
4 best categorize my remarks and how to summarize them
5 in a brief amount of time, three words kind of came
6 to mind that I think summarize this whole dispute.
7 Those words are name, blame, and shame, and I think
8 they best describe the underlying case in these
9 proceedings, and I think you will see why.

10 Because when I talk about name, I guess
11 the first thing we have to do is look at the name of
12 what Mr. Radbil is being accused of in this case.
13 There are three things that are before the Court:

14 The Rule 37 sanctions regarding discovery
15 cooperation. And if you look at the four corners of
16 the pleadings of the other side, those deal with
17 actual damages and experts. That's what they
18 complain about in their Rule 37 motion, and so
19 that's what's before the Court.

20 Then there is their Section 1927 motion,
21 which is the multiplication of vexatious litigation
22 component.

23 And then, of course, thirdly, completely
24 independent of that, is this Court's obvious
25 inherent power to sanction.

1 And without offending the Court's
2 sensibility, I do think it's appropriate to discuss
3 briefly kind of the standard of review when we're
4 going to analyze the conduct of the parties
5 involved.

6 And with respect to Rule 37, one of the
7 things that the Court has to look at is if the Court
8 finds that there has been unnecessary resistance to
9 discovery, is it substantially justified? Is there
10 an existence of a genuine dispute? And of course,
11 that's limited to just the case at hand. It doesn't
12 matter what has transpired in the state of
13 Washington or the State of Florida or anywhere else,
14 that's what Rule 37 requires.

15 With respect to 1927, what the standard of
16 review is in that matter is that there has to be an
17 attorney who so multiplies the proceedings
18 unreasonably and vexatiously -- that's conjunctive,
19 and not disjunctive -- and that person maybe liable
20 for costs and attorney fees reasonably incurred as a
21 result of that conduct.

22 And then, of course, this Court knows what
23 its inherent power is to sanction. But certainly
24 the Court therefore knows that the standard is
25 related to the conduct in the litigation at bar as

1 opposed to in other matters. And this Court knows
2 that it's charged with the duty of exercising its
3 inherent powers with some degree of restraint, and
4 therefore a finding of bad faith or improper motive
5 must be shown.

6 Now, I think that's important, because we
7 have to therefore look at what is the relief that's
8 being sought in this case and analyze that under the
9 standard of review. And in this case, what is being
10 sought is that RAB is seeking to shift the entirety
11 of the cost of this litigation to Mr. Radbil and to
12 Weisberg & Meyers. They haven't broken it down in
13 any particularity. Obviously, I only represent
14 Mr. Radbil. But the point being is that the
15 testimony was that, through the end of October, they
16 had \$133,000 in fees, and that's what they are
17 seeking in this case.

18 And when they seek to shift the entire
19 cost, the claimant must prove by clear and
20 convincing evidence that every facet of the
21 litigation was patently meritless; there was a lack
22 of a reason to file it and prosecute the case. We
23 are going to talk about those elements when we go
24 through some of the particulars of their 1927
25 complaints.

1 But I think -- from the outset, I think
2 the Court can agree that certainly the entirety of
3 the costs should not be shifted in this case,
4 particularly when you have a number of motions that
5 were filed by Weisberg & Meyers and Mr. Radbil in
6 which they prevailed and motions that were filed by
7 the other side which were denied. Certainly you
8 can't say that, for example, a motion for partial
9 summary judgment that was granted was something that
10 was filed in bad faith.

11 And so the other aspect of the first word
12 that I talked about, name, that I wanted to talk
13 about, is kind of the issue of name calling. And
14 we're going to talk about that a little bit when we
15 discuss bad faith.

16 And I say that, because I appreciated
17 Mr. Meyers' comments, because it is hard to sit
18 there when your professional reputation, as well as
19 your professional ability to practice in the future,
20 is on the line.

21 And that doesn't necessarily change things
22 all across the board, but I guess it does show that,
23 when you're dealing with very serious issues like
24 this and serious allegations, that, at bear minimum,
25 you shouldn't have a double standard.

1 And I think this Court has looked -- this
2 is obviously not the first time the Court has faced
3 a Rule 37 or a 1927 situation. And so this Court
4 knows that it's somewhat equitable in nature, and
5 that, therefore, the party that seeks their fees,
6 particularly when they seek all of them, they have
7 to also have clean hands.

8 I think some of the cases say something
9 along the lines of that those who live in glass
10 pleadings shouldn't throw sanction stones. I am
11 certainly not accusing my esteemed colleagues over
12 here of any of that, but I do think it's important
13 to look at some of the double standards that have
14 happened in this case vis-a-vis the relief that they
15 sought in their motion.

16 For example, one of the things that they
17 seek relief for in this case is they seek sanctions
18 and claim that it was vexatious, bad faith,
19 improper, whatever nomenclature they want to use, to
20 say that Mr. Radbil shouldn't have gotten up there
21 in saying that the auto dialer was used three times.
22 And even if that wound up in the joint pretrial
23 order, which, in fact, it did, the argument by RAB
24 says, well, that's a mistake and they shouldn't --
25 should have known it was a mistake because it's

1 inconsistent with all of our other arguments. Okay?

2 I'm not saying that that's an unreasonable
3 position at all. The joint pretrial motion did say
4 that. It does say joint. It said so under the
5 defendant's portion. And if they want to say that
6 that's a mistake, so be it.

7 But what then we look at -- by the way,
8 the joint pretrial order is Radbil Exhibit Number 6.
9 But compare that to the response to the pretrial
10 motions, I believe it's docket entry number 95.
11 That's the issue where there was a typo, where the
12 document should have said, "none of whom," but
13 unfortunately it said, "one of whom."

14 Their position is, look, our mistake on
15 the joint pretrial order, well, that's a mistake,
16 and you should have known it was a mistake based
17 upon other pleadings. But with respect to this
18 pleading, well, you must have just done that in bad
19 faith, because, when it says, "one of whom" versus
20 "none of whom," we are entitled to believe and rely
21 upon that. Even though five days earlier, docket
22 entry number 90 is the response to the motion to
23 strike experts where, the first time the motion is
24 filed, no response is even filed because they are
25 saying we are not even going to have any experts;

1 the second time the response indicated that --
2 docket entry number 90 says, there are no experts to
3 strike.

4 So five days later, when there is a
5 typo -- the point is, there is a typo. There is no
6 bad faith there, and yet their position is, that's
7 not a typo, it's bad faith. But when it came to our
8 same type of mistake, well, there's nothing wrong
9 with that, it's just a mistake.

10 The same thing happened with the
11 protective order. In the spring of 2012, the
12 plaintiff asked for a protective order for the case
13 of fee bills; RAB says no. Then, when it's time for
14 RAB to produce records, they want a protective
15 order. So that's when it happens.

16 Mr. Martin sends to Mr. Radbil a
17 protective order and says, it's the same one we used
18 in the Lee case. Mr. Radbil looked it over,
19 contacted him and says, that representation is not
20 true. It's not the same one as the Lee case, and
21 you made some changes, your false statements to me,
22 notwithstanding. Now it gets corrected; the
23 protective order gets entered. We heard
24 Mr. Martin's testimony on that, where he said it was
25 just an honest mistake, and I am certainly not here

1 suggesting to the Court that it's anything but that.

2 But my point is, once again, it just goes
3 to show that even good lawyers, conscientious
4 lawyers, can make mistakes and we ought not to have
5 a double standard.

6 We saw it on the motion to compel. RAB
7 found a motion to compel saying they didn't get any
8 testimony from Dr. White's deposition on damages.
9 And while there were some good faith disagreements
10 in the deposition -- and I'm not saying that there
11 was not a good faith basis to file the motion to
12 compel -- that particular statement was not
13 accurate. There was a hearing on the motion, and
14 the motion was denied. And of course they seek
15 their fees for that because they seek the fees for
16 everything.

17 And so I could go through and perhaps list
18 others, but I've got limited time. And I just want
19 to point out to the Court that, when we're dealing
20 with the issue of double standard in the context of
21 what the standard of review is, I think it makes it
22 hard to find bad faith.

23 So let's now then --

24 THE COURT: I will give you your time back
25 on this, Mr. Jefferson. So what is the Court to do?

1 This is the sixth time we have been together. You
2 have heard the frustration that sounded like was
3 coming from Judge Hughes in his transcript, and I
4 feel identically as he did from what I've seen in
5 this case.

6 You're right, one, two, three mistakes;
7 good, busy lawyers do this. I've watched it for the
8 last 30 years, and no one gets sanctioned. So what
9 do you do? Are you saying that there's nothing that
10 should be done by the Court in this case by way of
11 sanctions?

12 MR. JEFFERSON: You know, Judge, I'm
13 not -- I certainly don't want to suggest that I'm in
14 a better position than you. But I think, frankly,
15 and I think Mr. Suazo will be man enough to admit it
16 that he stole it from me, but I think the most
17 profound thing that's been said in all of the time
18 that we have been together was one time when
19 Mr. Suazo was asking Mr. Radbil a question, and it
20 was a straight-up question, and Mr. Radbil, with all
21 due respect, he took a left turn at Albuquerque.
22 And you stopped him and you said you were
23 frustrated, and Mr. Suazo said, Your Honor, I'm
24 frustrated, because, when I ask Mr. Radbil what time
25 it is, he tells me how to build a watch. And I

1 refer to that as the dark and stormy night syndrome.
2 And Mr. Radbil is not the first good person that I
3 have met with that particular problem.

4 But the dark and stormy night syndrome
5 basically is: Tell me when you were born. And the
6 answer is: It was a dark and stormy night when
7 mother went into labor. The stars were low and the
8 moon was high on the windswept plains, and suddenly,
9 without warning, her water burst. Dad reached for
10 the keys to the Impala station wagon, and we went to
11 the Community General Hospital.

12 THE COURT: You still haven't answered my
13 question, Mr. Jefferson. You can pick every tiny
14 detail, and there are millions of them as to what
15 occurred in this case, and you have, and you've
16 given some discussion as to why it's not
17 sanctionable. But I keep waiting for someone on
18 this side to say, this is wrong. Lawyers don't do
19 this; lawyers don't behave like this; lawyers don't
20 treat their clients this; law firms don't promote
21 their law firms with lawyers like this. This is
22 wrong.

23 Judge Hughes saw it, and obviously other
24 courts have seen it. I am not hearing any of that.
25 I haven't heard it from Mr. Meyers or Mr. Radbil.

1 And with all due respect, I haven't heard it out of
2 the able defense that you have presented.

3 MR. JEFFERSON: Thank you, Your Honor.
4 And I hope to cover that in the context of some of
5 the specific arguments. But let me just briefly
6 tell the Court this. Okay?

7 The Court is the factfinder. And so just
8 like we don't get to substitute our views for the
9 jury, this Court already knows what the standard --
10 the standard of review is. And I hope to go through
11 on the list of the things that they complain about
12 and provide to the Court a reasonable explanation.

13 THE COURT: Which does answer my question,
14 if that's where you are going --

15 MR. JEFFERSON: Yes, it does --

16 THE COURT: -- is that no sanctions should
17 be imposed in this case.

18 MR. JEFFERSON: Yes.

19 THE COURT: Let's go there.

20 MR. JEFFERSON: Very fair, because that's
21 actually -- that's actually the next thing. But the
22 reason why I went through the dark and stormy night,
23 because it's a prelude to all of this because --
24 because it does go to show what I believe was the
25 basis for miscommunication between Mr. Radbil and

1 the Court, which I think that the Court could
2 rightfully take as somebody being disrespectful to
3 the Court. Because I have to tell you, when I am
4 preparing -- and it's not been just Mr. Radbil. I
5 have had other people with the dark and stormy night
6 syndrome. It is incredibly frustrating. It doesn't
7 mean that Mr. Radbil disrespects me as an attorney.
8 I happen to know from other comments that he's made
9 that he doesn't feel that way.

10 But under the heat of the moment, when we
11 get into a role playing situation, although I'm not
12 a psychologist or a trial scientist or anything like
13 that, and so I can't give you a diagnosis, I can
14 just tell you what happens. And while it's
15 frustrating, I don't think it is meant to be
16 disrespectful.

17 And the best example of that, which is one
18 of the things that they complain about, is the whole
19 issue of the failure to disclose damages. And we
20 have spent a lot of time on that particular issue,
21 and that's one of the two things that they outline
22 in their -- in their motion. So let's talk about
23 that 40,000-dollar one. Okay?

24 You know, Mr. Radbil struggled with the
25 client on this one because he didn't believe the

1 40,000 additional loan fees were recoverable against
2 the debt collector, although Texas Guaranteed was
3 something else. And one of the reasons why the
4 record was just supplemented -- and I won't read it
5 verbatim -- but you now have in front of you the
6 newly-added Exhibit 38, which was correspondence
7 from Dr. White to Mr. Radbil that goes through that
8 issue and says: I know that I have to have
9 documentation for this, and I'm looking for my copy.
10 It goes through this whole issue of damages.

11 I point that out because, at some point in
12 time Dr. White was saying, well, gee, I thought that
13 this issue would be brought up. It was brought up
14 in the moderated settlement conference.

15 The e-mail communication shows that
16 Dr. White knew that there needed to be
17 documentation. But unfortunately, when we get up to
18 the apex which is you, there is -- there's no doubt
19 about it. There is a lack of communication to you.
20 Okay?

21 And so then the question becomes, is the
22 lack of communication to you a -- is it bad faith
23 and disrespect to the Court, or is it something
24 else? And I think that as you've seen him interact
25 and when you look at the logic of the situation, I

1 frankly it's hard to believe that somehow or another
2 it was some sort of secret scheme to try to sneak
3 something past. He doesn't bring it up in the
4 opening statement. And the question that Mr. Radbil
5 asked didn't solicit a 40,000-dollar damage
6 response.

7 What Mr. Radbil was concerned about on
8 that particular issue is that he didn't want his
9 client to come across as a deadbeat. Because a lot
10 of times when you have these type of cases, the
11 reason why people are getting the phone calls to
12 begin with and getting the letters to begin with is
13 because they have defaulted on some kind of
14 underlying financial obligation.

15 And I have never tried one of those cases
16 and don't claim to be an expert on them, but I do
17 understand from a general standpoint that that would
18 be an issue that you would need to debunk in front
19 of a jury, i.e., that your client isn't a deadbeat.

20 Now, I've got to tell you, I don't have --
21 I don't have a crystal ball to tell you why
22 Mr. Radbil had such a disconnect with what was a
23 straightforward question from you when you are
24 saying, where is it that you disclosed this
25 information? And you asked him that question. And

1 in your eyes -- and it was true, because you knew
2 what the intent of your question was. Mr. Radbil
3 took the proverbial left turn at Albuquerque, and he
4 started talking about the issue of, well, you can't
5 quantify these type of damages because they are only
6 mental anguish damages, and I disclosed that.

7 And of course you're going, no, this is
8 not disclosed. And you're asking him questions
9 about the \$40,000. And for whatever reason, he's
10 processing it based upon what he has disclosed in
11 the joint pretrial order.

12 And if you look at the joint pretrial
13 order, which is Radbil Exhibit Number 6, right,
14 wrong, or indifferent, this is how Mr. Radbil
15 defines actual damages: Defendant's wrongful
16 conduct caused plaintiff to suffer legitimate,
17 actual damage. Plaintiff's actual damage does not
18 only include any out-of-pocket expenses, but also
19 damages for personal humiliation, embarrassment,
20 mental anguish, and emotional distress. And then he
21 cites authority for that.

22 And then he says: The jury must determine
23 for themselves upon the consideration of the facts
24 of the case what damages have actually been
25 sustained by plaintiff in consequence of the

1 unauthorized and wrongful acts of defendant.

2 Okay? That's what he disclosed, and
3 that's what he's talking about in this case.
4 Clearly, what happened with both the
5 miscommunication and with -- and with what
6 ultimately transpired was unfortunate. But -- but
7 given the fact of what he put in the joint pretrial
8 order, given the fact that when the \$40,000 comes
9 out on a question where he asks a general question
10 about actual damages that's not objected to, it's
11 hard to say that that was some sort of intentional
12 plan or scheme.

13 Now, the -- and the other issue on the
14 damages was the 5,000-dollar damage issue, but that
15 came out during Ms. Malone's examination and not
16 Mr. Radbil's examination. And so that's the issue
17 with respect to -- to the issue of the failure to
18 disclose damages.

19 Now, the other issue was the failure to
20 disclose expert witnesses. And once again, Judge,
21 you know, admittedly, there was a little bit of
22 disconnect there. But at the end of the day, I
23 think if you go back and look at docket entries 90
24 and 95 that I discussed before, it's very clear when
25 they filed a motion to strike, he said, there are no

1 expert witnesses to strike.

2 Their apparent response to that is they
3 found a couple of entries in the Weisberg & Meyers's
4 fee records, both of whom are from paralegals, that
5 say, we sent a letter to an expert witness. But
6 they clearly couldn't have -- or have never argued
7 that they somehow relied upon an entry from a
8 paralegal on those fee bills. And more importantly,
9 the contemporaneous motion filed right before trial,
10 it kind of goes back to this double standard issue,
11 says, we don't have any expert witnesses.

12 Now, does that mean that the issue
13 couldn't have been handled better? No, it doesn't.
14 But I would note that when I went through the Malone
15 law firm's fee records, it revealed spending extra
16 time working on exam outlines only once on February
17 the 14th for three hours.

18 Now, there was one other issue about these
19 witnesses, Judge, because I want to make sure that I
20 am completely candid here. And that is at some
21 point in time a decision was made, and I think
22 perhaps it was an institutional decision, that we're
23 not going to talk to these witnesses in advance and
24 find out what they are going to say.

25 And I heard Mr. Meyers say that, and I saw

1 the reaction on your face, and I was told that I had
2 the same bad poker face and I had the same reaction.
3 So once again, I will admit, I have never tried a
4 fair debt collection practice act case. So maybe
5 there is a reason why you don't talk to these people
6 in advance.

7 THE COURT: I know that you don't think
8 that, Mr. Jefferson.

9 MR. JEFFERSON: But as I said --

10 THE COURT: In the interest of advocacy --

11 MR. JEFFERSON: But --

12 THE COURT: Let me finish. In the
13 interest of advocacy, there isn't a first year law
14 student that would tell you that you should ever put
15 a witness on that you haven't talked to under any
16 circumstances. The fact that someone might be able
17 to say you've been coached -- well, first of all, I
18 don't allow that in here because it's work product.
19 But certainly that has gone on in millions and
20 millions of trials, and that strategy makes no sense
21 under no circumstance.

22 So let's move on to another point.

23 MR. JEFFERSON: That's exactly my point.
24 I just wanted to drop a footnote that maybe there is
25 some nuance about the Fair Debt Collections Practice

1 Act that I don't know about.

2 THE COURT: I would prefer that you move
3 on to another point. You are doing fine --

4 MR. JEFFERSON: But --

5 THE COURT: -- except for that, so just
6 move on. I don't want to hear anything more about
7 that point, because it's a not a point that I think
8 has any validity. So please move on to the next
9 point. All right?

10 MR. JEFFERSON: Sure. Sure.

11 And Judge, the next thing that is argued
12 in this case is the -- are the other reasons.
13 Anyway, let me wrap up by saying that under Rule 37,
14 those are the two things, the failure to disclose
15 damages and the failure to disclose expert
16 witnesses.

17 Now, under the 1927, in addition to those
18 arguments which I have already addressed, they say,
19 well, this was somewhat of a trial by ambush, but
20 this goes back to that same economic actual damages
21 issue. And frankly, it's illogical to suggest that
22 the plan was to not disclose the damages, not
23 disclose the witnesses; to file a motion saying you
24 don't have any expert witnesses, and then smuggle it
25 all past an experienced judge and then say, here

1 comes my opening statement, I'm going to start
2 asking for all of these particular damages. That's
3 not what happened. And if he did want to conduct a
4 trial by ambush, I think he would have directly
5 answered those questions in his short 25-page direct
6 as reflected in the record, and he didn't.

7 The next one that they argue is, well,
8 they negotiated in bad faith and they refused an
9 offer of judgment. Well, I think the testimony here
10 as to Mr. Radbil is that that's above his pay grade;
11 that he's not the make-or-break person in terms of
12 settlement, he has to get authority. And with
13 respect to their argument they rejected and ignored
14 the pre-suit demands, the evidence is pretty clear
15 that this was not his case to begin with.

16 So those allegations are not ones that are
17 specific to Mr. Radbil. I would point out, however,
18 that when there was the moderated settlement
19 conference with the magistrate, the magistrate said
20 that the negotiations there, where Mr. Radbil was,
21 were negotiated in good faith.

22 So then they say, well, there has been a
23 multiplication of proceedings because they had to
24 file a motion to compel --

25 THE COURT: Slow down just a little bit.

1 I will let you finish.

2 MR. JEFFERSON: They multiplied the
3 proceedings because there was a -- because they had
4 to file a motion to compel. The motion to compel
5 was ultimately denied as moot; things worked out,
6 and that's what lawyers are supposed to do.
7 Sometimes you file motions, and then after the
8 motions get filed you work them out, and that
9 happened on both sides of the street in this case.
10 They had to file objections to the disclosures we
11 have talked about that. They had to file a motion
12 to quash on the subpoenas. Okay?

13 Now, with respect to the subpoena issue --
14 again, I wasn't there. But the Court had a minute
15 order that called for subpoenas or to make
16 arrangements to bring the witnesses to trial. Once
17 again, this is a situation where there was a
18 breakdown in communication. Mr. Radbil thought that
19 your order meant one thing; obviously, it didn't
20 mean that. And so -- but I don't think that that is
21 any type of evidence of bad faith.

22 Then I think you have to look at their
23 other aspect of the multiplication when they talk
24 about all of the other motions. Well, when
25 Mr. Radbil was on pleadings, he filed eight motions

1 in the 19 months that this case pended. He filed
2 docket entry number 9, a motion to extend time under
3 the 26F conference, which was granted; docket entry
4 32, motion for leave to file under seal and motion
5 to compel. And the motion for leave to file under
6 seal was denied, and the motion to compel was
7 granted in part.

8 Docket entry 38, emergency motion to
9 extend time to respond to a motion for summary
10 judgment, and that was granted over opposing
11 counsel's opposition.

12 Then there was docket entry 50, a motion
13 for leave to file a corrected motion for summary
14 judgment response. It was granted over the other
15 side declining to say whether or not they were
16 opposed or not. And I only point that out because
17 one of the complaints in this case was
18 that Mr. Radbil was not quick enough in returning
19 phone calls prior to trial with respect to issues
20 involving witnesses and exhibits and the like.

21 But if you look at the Certificate of
22 Conference in this motion, it goes and points out
23 that they never got a response from opposing counsel
24 on whether or not they were opposed. And once
25 again, I'm not subscribing an ill motive towards

1 opposing counsel on that at all. We lawyers get
2 busy. If I have opposing counsel that are trying to
3 reach me right now, they are out of luck. I will
4 get to them to tomorrow or when I get to them, and
5 that's what happens when you are in trial. The
6 point being is that you can't take that one thing
7 and say, okay, well, that's evidence of bad faith
8 when it happens on both sides and it happens all the
9 time in the practice of law. I could go on with the
10 other motions, but there are -- some of them are
11 things, like docket entry 83, a motion in limine,
12 and that's just part of the standard practice.

13 I think what is important is that there
14 was ultimately an estimate that the trial would take
15 approximately two-and-a-half days. That's what the
16 parties said in the joint pretrial order, which is
17 docket entry 108, and the parties both estimated
18 two-and-a-half days. Mr. Radbil called only two
19 witnesses, and that's how long the trial lasted. So
20 it's hard to say, therefore, that the proceedings
21 were multiplied when they came in under budget or at
22 budget, so to speak.

23 Then they argue the issue, generally, that
24 the litigation was vexatious. And in part they said
25 that what they really focused in on here was the

1 corporate rep depo and the trial policy manual
2 issue.

3 And you know, Judge, this is one of those
4 issues where you have to look at it and say, okay,
5 would a more experienced lawyer, knowing how to
6 handle this issue, when you have somebody who wears
7 multiple hats? Okay. And I think the answer to
8 that question is probably yes. Okay?

9 And I don't know what his level of
10 experience was or the level of supervision that he
11 got. But admittedly, the practice at the firm at
12 this point in time is, if you're going to call a
13 witness who is a third party, you don't even find
14 out what they are supposed to say in advance. So I
15 find it hard to fault Mr. Radbil in that situation.
16 But the Court, you know, asked me to be candid on
17 certain issues where I would agree that, yeah, this
18 is something that could have been handled better,
19 and that's certainly one of them.

20 One of the other issues they have brought
21 up is the issue of the Weisberg & Meyers fee
22 contract. I think the evidence in this case has
23 established that whatever the Weisberg & Meyers fee
24 contract says or doesn't say has no bearing on
25 Mr. Radbil because he has no input into it, no

1 ability to change it, and Mr. White's case was
2 signed up before it was assigned to him.

3 And then there was the issue about -- the
4 issue about counseling when not disclosed and the
5 sidebar ruling. And Judge, once again, you know,
6 this is kind of the dark and stormy night deal in
7 reverse. Okay?

8 I appreciate, because there are some
9 people that are this way, and I happen to be one of
10 these people. There are some people, if you look at
11 them and you say, do you know what time it is? Most
12 people would go, it's 1:54.

13 My -- because of my training, the way I
14 am, I would say, okay, objection, nonresponsive. I
15 didn't ask you what time it is, I asked you do you
16 know what time it is, and that's a yes-or-no
17 question. Maybe I asked you that question not
18 because I wanted to know what time it was, maybe I
19 asked you that question because I wanted you to pull
20 up your sleeve to see whether or not you had an
21 expensive watch on. There may be some other issues.

22 The point that I am making here is that
23 there are some people who -- other people, like my
24 wife, for example, would say that, you know, you
25 just -- you just sliced the bread too thin for me

1 when it comes to the use of words.

2 And what we had happened in this situation
3 was frankly a poorly-worded question, which is --
4 but it is a matter of semantics. He said to
5 Dr. White, did you seek or obtain counseling? And
6 what he was looking to elicit from Mr. White,
7 according to Mr. Radbil's testimony, was the fact
8 that he made some appointments to go see some
9 doctors and that, thereafter, they were pulled down.
10 Okay? That's what he was hoping to accomplish.

11 And I will be the first one to admit that
12 the question could have been asked better, because
13 in that situation you wouldn't need the word
14 "obtained" in the sentence. His explanation is,
15 well, I was trying to highlight the distinction.
16 Okay? And I get that. Okay?

17 I think it's a bad distinction,
18 personally, as somebody who was a fellow wordsmith,
19 but that's what it is. But I don't think that you
20 can jump, therefore, to the presumption to say he
21 asked that question with the intentional purpose of
22 eliciting some sort of coached testimony.

23 THE COURT: Now, this is the area where we
24 had the sidebar because of an objection, correct?

25 MR. JEFFERSON: Exactly.

1 THE COURT: And I asked him, after I heard
2 what the objection was -- that's going to be a fire
3 alarm, which is for the first floor. So maybe we
4 can get our court security officer to see if they
5 can turn the volume down.

6 So Ms. Malone objects to that; they come
7 around sidebar; she tells me why she's objecting.
8 And I asked him the question as to -- he said
9 something to the effect that he didn't know what he
10 was going to say, but I asked him if it was going to
11 be favorable, and I believe he said yes. Is that my
12 correct recollection?

13 MR. JEFFERSON: Yes, Your Honor.

14 THE COURT: That doesn't square with that
15 theory that you just posed.

16 MR. JEFFERSON: Respectfully, Your Honor,
17 I believe it does, because what he thought he was
18 going to say that was favorable was, I made some
19 appointments to go see the doctor.

20 THE COURT: He said he didn't know what he
21 was going to say.

22 MR. JEFFERSON: Well, I get you. Okay.
23 In other words, it kind of goes back again, okay,
24 you meet with a witness, but you don't necessarily
25 coach a witness. And so I get that once again we

1 have a communication -- you know, I keep using the
2 word difficulty. There's probably a better word, I
3 just can't come up with it at the moment.

4 Noah has in his mind what he thinks that
5 the answer is going to be, and he knows where he's
6 going. And as we have found in other situations,
7 you know, sometimes that road is not going where it
8 needs to go; sometimes that road is going to
9 Albuquerque. And that's the point that I'm making
10 here, is that in Noah's mind he's saying, I talked
11 to him about this issue, I haven't asked him this
12 particular question, but here's what I'm hoping that
13 the answer is going to be.

14 So then that goes back to the question of,
15 well, could the witness have been better prepared?
16 Well, yeah, I think the answer to that question is
17 yes. But the fact that the witness was not prepared
18 better I don't believe is the same thing as bad
19 faith, and that's the only point that I am trying to
20 make. I am certainly not trying to suggest that the
21 Court's recollection of the sidebar is incorrect,
22 because I believe you have recited it correctly.

23 The next thing that they argued is that
24 they failed to provide trial exhibits to the Court,
25 and there was an issue about the compliance with the

1 Court order. And you know what, Judge, that's
2 another one of those things. Okay? That happened
3 in this case. That happened in this case.

4 And so then the question becomes, why did
5 it happen in this case? And I think the testimony
6 was, was that Weisberg & Meyers had problems with
7 their fax machine back at the home office. That was
8 the place that was giving Mr. Radbil support for a
9 Texas-based lawsuit, was the office back in Phoenix,
10 he's in Texas, they're in Arizona, and he is
11 actually at a hearing in Houston, I believe, so he
12 does the best that he can.

13 Now, does that mean, therefore, that he
14 didn't violate the Court's order to actually
15 physically exchange the exhibits? No, it doesn't.
16 But I certainly don't think that you can say, A,
17 that Mr. Radbil, as a nonpartner, salaried
18 associate, should be strictly liable for the amount
19 or lack thereof for the administrative support that
20 he gets.

21 And I think under the circumstances he did
22 a commendable job of doing the best he could by
23 having a cab driver take him to the Federal Express
24 office and taking on this paralegal-type task
25 himself.

1 And so once again, that's something that
2 the Court has to look at, because by the letter of
3 the law, that's clearly a court order that wasn't
4 followed. Then the question becomes, is that
5 Mr. Radbil's fault or is that somebody else's fault?

6 THE COURT: All right. Let's give this a
7 second. We were told this was going to happen this
8 afternoon a few days ago. It's a rehearsal, and it
9 doesn't effect this, but let's see if we have any
10 information.

11 (Pause in the proceedings.)

12 THE COURT: They are going to try to get
13 the volume turned down. I want to keep going.

14 MR. JEFFERSON: Actually, it's not really
15 bothering me, Judge.

16 Just to go through some of the others,
17 they had the issue of talking about they called and
18 e-mail approximately 20 times on Saturday before
19 trial; we have already talked about that issue. We
20 had the issue about telling the client that he
21 should be at the deliberations and not having to be.

22 And so what Mr. Suazo did this morning
23 with Mr. Radbil was to go through the text messages,
24 which I think put all of that in context. And when
25 you see those text messages, what Dr. White says is

1 that he said, in essence, look, I've got a lot of
2 handicapped-type patients and they need me, and
3 that's where I really need to be. So I can't
4 explain why Dr. White said to the Court what he
5 said. Okay? I can't. But I know what the e-mails
6 show -- or the text messages show, and they show
7 exactly what Mr. Radbil's testimony was.

8 We've talked about some of the other
9 issues like the automated calling device; I dealt
10 with that issue up above. The protective order, I
11 dealt with that issue up above. And then there was
12 the issue about his failure to file an earlier
13 motion to compel to get redacted records and asking
14 the Court to review them in camera. Okay?

15 Judge, this is another one of those areas
16 that the Court may be correct, that an earlier
17 motion to compel may have addressed the issue. But
18 you know, the other way to look at it is, is that
19 the practical approach of reviewing a few pages in
20 camera before trial as opposed to filing an actual
21 motion, which they would then argue, I guess, was
22 vexatious. It certainly wasn't abusive. From a
23 trial standpoint, if I was handling that case, you
24 know, would I have wanted to have that issue heard
25 sooner? Well, sure I would have. Okay. Absolutely

1 I would have. But a strategic timing mistake is not
2 the same thing as bad faith.

3 And neither is the other issue that they
4 talk about, about wanting to call the witness twice
5 in a row. I mean, I saw that happen -- I saw that
6 happen in this hearing when, after I had
7 cross-examined Mr. Martin, Mr. Meyers asked, well,
8 will he get to go now, or will we just recall all
9 these people.

10 THE COURT: Are you talking about the
11 corporate representative?

12 MR. JEFFERSON: Yes.

13 THE COURT: I mean, the whole problem with
14 that is, we have been over it ad nauseam, is that he
15 was arguing with an argument that had a false
16 premise; it was disingenuous. And again, in a
17 vacuum, perhaps, it could have been explained, but
18 it's just a pattern of so many of these and a
19 refusal to acknowledge. All right. I don't mean to
20 interrupt you, but . . .

21 MR. JEFFERSON: Well, yeah, and certainly
22 defendants have been known to have someone speak in
23 different capacities. And I think a more
24 experienced lawyer may have indeed handled that
25 situation differently. He was here trying the case

1 by himself, doing the best that he could, but I
2 don't think that that equates to the issue of bad
3 faith.

4 And you know, you may remember when I
5 cross-examined Mr. Martin -- I mean, I just met him;
6 he's a delightful fellow. I enjoyed actually
7 meeting his dad and chatting with him about mutual
8 friends. I thought he was very forthright. And I
9 asked him some questions toward the very end, and
10 one of them was kind of tough, and it was the
11 cross-examination about bad faith. And I finally
12 asked the question, I said, you know, let's exclude
13 everybody else on the planet except you and
14 Mr. Radbil. And ultimately the response I got was,
15 well, you know, I've just had some problems dealing
16 with Mr. Radbil and his firm in a lot of these kind
17 of cases.

18 And I'm not here to dismiss any of his
19 testimony, but what I am suggesting is that, when we
20 asked for the particulars of bad faith, that's the
21 answer that we got from them.

22 THE COURT: Mr. Jefferson, that's the
23 whole unique problem here in this case. It's an
24 aberration from normal Rule 37, 1927 bad faith
25 conduct type of lawyer issues. It's a pattern.

1 It's a pattern of promoting incompetence and then
2 ignoring it and refusing to admit that it's going
3 on, and it obviously happened in Houston, as well.
4 I mean, it's -- there is not a case out there on the
5 case books where this kind of conduct has gone on
6 that I could find, and I haven't seen any that have
7 been submitted. It's beyond the kind of thing most
8 lawyers would even think about allowing to continue.
9 I'm not talking about you, I'm talking about the
10 lawyers in this case, Mr. Radbil and Mr. Meyers.
11 It's very worrisome.

12 MR. JEFFERSON: Your Honor, I'm certainly
13 not dismissing the daunting task that the Court has.
14 I would point out that, respectfully, I don't
15 believe the Court has the ability to sanction
16 anybody over here for activities that happened in
17 the Court.

18 THE COURT: Right, but -- but the problem
19 is, since no one involved, Mr. Meyers and --
20 Mr. Jefferson, I appreciate -- I know you are
21 looking at your notes, but I appreciate you looking
22 at me -- Mr. Meyers or Mr. Radbil will agree that
23 anything they did was wrong, that the Court has to
24 look to their credibility. Are they telling me the
25 truth? Are they making this up? Because it looks

1 like they are making it up.

2 And all circumstantial evidence, I think,
3 is relevant and permissible to consider what
4 happened in this case, their intent and the
5 truthfulness of what they have told me in this case.
6 And if they are telling me one thing and I am
7 hearing Judge Hughes in a case that went on during
8 this saying exactly what this Court is thinking,
9 well, that's circumstantial evidence at least of
10 their intent and their motives in this case.

11 MR. JEFFERSON: Yes, and I certainly
12 understand the Court's argument there. And in fact,
13 I think we objected to some of the -- some of that
14 testimony early on on the basis of relevance, and
15 this Court gave us that explanation. So we clearly
16 understand where the Court is coming from.

17 So I certainly don't want to get down in a
18 debate over what transpired in all of those cases.
19 I do know a little bit about the Scarlott case based
20 upon the testimony from Mr. Radbil this morning.
21 And once again, that was a case that was not filed
22 by him that he inherited, again, from Mr. Kurz who
23 started the downhill snowball rolling by apparently
24 having 55 cases filed in federal court in Texas
25 without being certified in the various districts.

1 But that's not the -- that's not the fault
2 of Associate Radbil. Now, it is his fault, and
3 certainly he has to answer for some of the other
4 things that the judge found in that particular case.
5 I understand that there was not an evidentiary
6 hearing like you have afforded in this case, and I
7 know that they are taking the matter up on appeal.

8 So again, I'm not trying to dismiss what
9 the Court is saying about looking at it from
10 circumstantial evidence. But I guess the point that
11 I'm trying to make is that whatever faults that the
12 Court may find with the law firm should not be
13 imputed to the associate who has inherited files or
14 who doesn't have control over such things as the fee
15 contracts. That's the point I'm trying to make.

16 THE COURT: Of course that would be unless
17 he was complicit and knew what was going on and
18 acted accordingly, and that's the question.

19 MR. JEFFERSON: Yes. And you may recall
20 that I asked Mr. Meyers those questions to elicit
21 those responses, and I appreciated his candor when
22 he said that that was not -- that did not fall
23 within the ambit of Mr. Radbil's job or job
24 description.

25 THE COURT: Right. But Mr. Meyers would

1 not be the only source the Court would rely upon in
2 order to determine that particular fact.

3 MR. JEFFERSON: Fair.

4 THE COURT: All right.

5 MR. JEFFERSON: And so frankly, Judge, in
6 my brief remaining moments here, it kind of gets to
7 my last point of the issue of the shame, because
8 what happened here was certainly a shame. And you
9 know, Mr. Radbil had tried to tender a check before
10 for the time that he was late. I understand
11 Ms. Malone's position, that she didn't want to take
12 it because she didn't feel that she could, and I
13 know that Mr. Radbil still stands ready, willing,
14 and able to personally pay for that, and he offers
15 no excuses.

16 THE COURT: That's a 650-dollar check?

17 MR. JEFFERSON: It's -- it's 175 and 140
18 added together times two hours plus interest --

19 THE COURT: All right.

20 MR. JEFFERSON: -- is I believe what the
21 calculation was.

22 The -- but the point is, though, is that
23 it would be a shame to hold Mr. Radbil personally
24 responsible for clerical matters or lack of support,
25 and he already has this sanction issue hanging over

1 his head.

2 Ms. Malone made the point when she was
3 cross-examining Mr. Meyers about, well, you know,
4 you can't -- you say you can't endorse Noah Radbil,
5 but then you send him to the Scarlott hearing on the
6 motion for sanctions.

7 And I am not suggesting that Mr. Meyers
8 has offered up Mr. Radbil as any sort of sacrificial
9 lamb, but the fact of the matter is, the guy has got
10 no job, no health insurance; he's still offering to
11 personally pay for things. And I know that because
12 of the nature of his personality. And I think the
13 Court -- and certainly I know from talking to
14 opposing counsel -- that they doubt the sincerity of
15 his actions.

16 And all I can say about that is that --
17 well, I will just use some of the quotes that this
18 Court said, and I will try to get them right. I
19 think that this morning, for example, you said that
20 you believe that Mr. Radbil has a wholesale lack of
21 experience; that he had no clue on how to get in
22 witnesses; that you had talked previously -- and as
23 we kind of, I don't want to use the word joked, but
24 we interchanged about the issue of the firm policy
25 of not finding out what third-party witnesses are

1 going to say until they show up the first time on
2 the stand. Those are serious issues. And those are
3 issues that can be addressed by the Court in
4 whatever way that they think they need to do with
5 respect to the law firm. And obviously I don't
6 speak for them, but with respect to Mr. Radbil, I
7 don't think that the answer to that question is
8 saying that, you know, you should have learned that
9 by the age of 32 and you haven't, so therefore
10 you're going to be disbarred in the Northern
11 District of Texas, which means you will therefore
12 have to report it back to the other districts. And
13 then the domino effect is, in essence, that he
14 becomes unemployable.

15 Again, that is certainly up to the Court
16 under its inherent powers. But again, I go back to
17 Mr. Meyers' apology when he pointed out how hard it
18 is to maintain one's cool when you are being called
19 a liar. I have represented in the past and continue
20 to represent a lot of lawyers, and humble pie is
21 hard to eat for anybody, and it's particularly hard
22 to swallow for lawyers.

23 And I'm not suggesting to the Court that
24 any of the defendants over here have a full stomach,
25 but I also don't think they need a stomach-ectomy if

1 that's a word.

2 THE COURT: Mr. Jefferson, I understand.
3 I appreciate that you are here. I think it's helped
4 quite a bit that Mr. Radbil has counsel just in the
5 communication of this.

6 It's just very frustrating to not -- still
7 not know what really has gone on between the Meyers'
8 firm and Mr. Radbil and what actually caused all of
9 this to occur. But I have watched lawyers for --
10 since I've been on the bench since 1990, for the
11 most part, in sanctions hearings. And invariably,
12 even the ones that have committed the worst conduct,
13 it's usually one or two incidents, and if they don't
14 admit it, that's fine. But it's never -- most
15 lawyers, even the worst conduct, will come forward
16 and say, I'm sorry, I want to respect the
17 profession, I'm going to do this better, and there's
18 an honesty there about what's gone on. That hasn't
19 occurred here. We've had six hearings just trying
20 to get that, and nothing close to that has occurred.
21 So I don't agree that this is characteristic of
22 other lawyers involved in sanctions hearings at all.
23 This is an aberration from anything I have ever
24 seen.

25 MR. JEFFERSON: Well, I didn't mean to

1 equate anybody in this case to any of my prior
2 cases. I was making a general statement. And
3 certainly I hope that Mr. Suazo and I have done
4 nothing to inhibit Mr. Radbil from making those
5 statements. But I guess what I would point out in
6 my final remarks would be this, and it's why I went
7 back and I told Mr. Radbil that I was going to talk
8 about the dark and stormy night syndrome, because I
9 said it to him right after we first met.

10 And the fact of the matter is he -- he has
11 some communication quirks. I mean, I remember for
12 example one time you -- you thought that Mr. Radbil
13 was making some unusual facial gestures when he was
14 trying to get our attention about a document. There
15 was another time in the hearing --

16 THE COURT: Well, he was. Let's wrap this
17 up. You're far --

18 MR. JEFFERSON: Yeah, these are my last
19 comments. There was another time that you thought
20 that maybe he was trying to intimidate Mr. Meyers,
21 and you said something --

22 THE COURT: Well, it looked like he was.

23 MR. JEFFERSON: Exactly.

24 THE COURT: That's the point,
25 Mr. Jefferson. I think you have made that point.

1 Let's move on to the final comments, because it's
2 time to wrap it up, and those areas are not getting
3 you anywhere.

4 MR. JEFFERSON: Judge, that was my final
5 comment, and that would be simply this, is that I
6 get -- I completely get, and I think Mr. Radbil
7 gets, that you believe that he has demonstrated a
8 lack of respect for the procedure. And the only
9 thing that I am saying is, is that when I first
10 dealt with Mr. Radbil, I completely understood where
11 that came from.

12 And my only point about bringing those
13 things out was to simply say that some of the
14 communication quirks that you have for Mr. Radbil
15 are just that, communication quirks, because they
16 are the same -- they are the same dealing with me,
17 and he's paying me. So thank you for your time.

18 THE COURT: Thank you, Mr. Jefferson.

19 Ms. Malone?

20 MS. MALONE: Actually, it's Mr. Martin.

21 THE COURT: Mr. Martin.

22 MR. MARTIN: Thank you. If I could get a
23 five-minute warning when my time is approaching?

24 THE COURT: Yes, I will.

25 MR. MARTIN: Thank you. What we have

1 heard here is not attorneys for consumers, but
2 rather attorneys for greed. And to do that, they
3 have taken advantage of consumers and posed a threat
4 to consumers trying to recover attorney's fees under
5 a fee shifting statute.

6 What we have also seen, as the way these
7 proceedings have shaped, is it simply appears that
8 plaintiffs' attorneys came down here for a slap on
9 the hand, and even now it seems they will only admit
10 that Mr. Radbil was late for court. We really have
11 seen no genuine apology and no genuine remorse about
12 what has happened, and it's simply shocking.

13 We've also seen that this firm thinks
14 sanctions or the threat of sanctions doesn't seem to
15 mean anything unless there is money attached to it.
16 And it's money that seems get their attention. Even
17 when the courts have sanctioned them monetarily,
18 they seem to justify what happened.

19 The Colorado Court was wrong in one case,
20 and the Tenth Circuit upholding that case was wrong
21 as well. Clearly, the sanction has to be punitive
22 to get their attention and also to protect
23 endangered consumers, as this Court has mentioned.

24 First, to deal with Regional Adjustment
25 Bureau's or RAB's motions for sanctions under

1 Rule 37, a court imposes discovery sanctions to:
2 One, secure compliance with the rules of discovery;
3 two, to deter others from violating them; and three,
4 punish those who violate them. I am reading from
5 the case, National Hockey League v. Metropolitan
6 Hockey Club, Incorporated, 427 U.S. 639 at 643,
7 1976.

8 And in this case it's clear that
9 plaintiff's counsel tried to sandbag Regional
10 Adjustment Bureau at trial, and the evidence is
11 overwhelming. First, to address the issue with the
12 experts -- experts, additional witnesses, they
13 disclosed them late in the game. And their excuse
14 for that is that Dr. White had not disclosed any of
15 these people until they were actually included in
16 their pretrial disclosures or supplemental pretrial
17 disclosures.

18 Well, that completely ignores the
19 discovery deadline in this case in actually telling
20 their client that we need this information by this
21 deadline. It just completely ignores that and
22 supports the position that they are being
23 sandbagged.

24 And then, to focus on the \$45,000 issue or
25 at least the 40,000 and interest and those issues

1 just regarding those actual damages. First, when
2 Mr. Radbil was asked by the Court during trial,
3 Mr. Radbil stated that the damages were disclosed in
4 the pretrial order. When the pretrial order was
5 looked at and it wasn't there, he then said it was
6 disclosed at the mediated settlement conference.
7 After that was discussed, he then went back to
8 saying the pretrial order, but then said they
9 weren't sure if they disclosed a specific amount.
10 It keeps changing.

11 After that, we can, in plaintiff's
12 response to RAB's motion for Rule 37 sanctions,
13 which is docket entry 125, plaintiff's counsel chose
14 to argue that the actual damages memo, not a mental
15 anguish memo, was privileged, protected from
16 disclosure, and it was RAB's fault for not
17 requesting a court ruling on the privileged material
18 and failing to show any substantial need for the
19 memorandum or that it could not obtain equivalent
20 evidence through its client, Texas Guaranteed.
21 That's talking about the increase in interest and
22 dealings with the student loan, added out-of-pocket
23 damages or economic damages attributable to RAB's
24 contact -- RAB's conduct and their allegations.

25 Then moving on, in the same briefing,

1 plaintiff's counsel and Dr. White argue that
2 Dr. White also separately disclosed that he would
3 seek economic damages in an amount to be determined
4 by a trier of fact at trial. There's a separation
5 here between economic damages and mental anguish.
6 Both of them were sought in this. And it's clear
7 that they were both sought looking at their initial
8 disclosures where it says actual damages.

9 Moving on, at trial, in plaintiff's
10 counsel's absence, we heard Dr. White state that he
11 prepared a memorandum on these damages and was
12 assured they would be presented at trial. To read
13 from the transcript, from February 27th in the
14 trial, page 17, line 16, Mr. White stated: I did
15 quantify the damages, and they were not in abstract
16 sum for mental anguish, they were real, financial
17 damages that I suffered. I made sure Mr. Radbil had
18 that information. The judge recorded it in the
19 settlement conference, and I was led to believe it
20 would be submitted for this trial, which of course
21 it wasn't, so I apologize.

22 And now, just today, we have seen the
23 December 6th memo, which is now RAB's Exhibit 45,
24 which completely proves our point about these
25 damages. They really did seek these damages, and

1 now we are seeing the memo that shows them, shows
2 they reviewed them, and nothing to show that they
3 ever advised them that they would not be submitted
4 at trial, not be submitted in pretrial disclosures
5 or whatever. It's pretty clear they sought these
6 damages and just withheld them from defendant's
7 counsel.

8 Again, with the \$40,000, the whole story
9 that we have heard in these proceedings is that
10 plaintiff's counsel had told Dr. White that those
11 damages were not recoverable. And just today, with
12 this memo and everything, and then with the e-mail
13 supplementing, I believe it's Radbil Exhibit 38, now
14 we hear that the reason that they weren't submitted
15 at trial or pretrial is because Dr. White could not
16 find the evidence. So there again, the story
17 changes. And I will admit that this Court expanded
18 my vocabulary with the word prevarication. That's
19 all we see here, is the prevarication and the
20 changing of the stories.

21 Judge Hughes, in the Scarlott transcript,
22 pretty much hit the nail on the head when he said
23 that when plaintiff's counsel hits a dead end, they
24 simply reform their story and go with another one,
25 and that's all they have done here.

1 And again, just kind of rehashing how they
2 argue in these hearings that he did not seek an
3 actual damages amount. They just were going for a
4 general, you choose, we're not going to tell you
5 what to choose, but just a generality, a number for
6 actual damages. They argued this in the briefing,
7 as well, in docket entry 125.

8 Well, how is it that the settlement
9 demands, the history of that in this case, seemed to
10 reflect a jump of those actual damages that they
11 apparently advised him that weren't recoverable or
12 did not seek at trial. We see the jump that
13 essentially correlates with that 40 or \$45,000.

14 We see that number is also reflected --
15 well, first we saw that number based on Dr. White's
16 answer from a question that Mr. Radbil asked him.
17 That number came elicited from a question by his
18 counsel. The clear point is they sought these
19 damages.

20 To repeat what this Court had said
21 previously, there is no indication whatsoever during
22 that exchange that this was a rogue response, which
23 lends again further force to the defense position
24 that there has been a just -- just a constant,
25 consistent amount of fabrication and lying and

1 prevarication in this case by Mr. Radbil.

2 And to summarize on the Rule 37, RAB has
3 incurred \$2,989 in costs for drafting its motions on
4 Rule 37 and incurred \$6,681.50 in costs from the
5 pretrial issues caused by this discovery abuse.

6 Moving on to the 1927 motion, as well as
7 this Court's inherent power. And briefly, as a
8 purview, RAB believes at a minimum it should be at
9 least compensated for all of its time and expense in
10 these hearings. I think everyone can agree that
11 these have gone on much longer than anyone ever
12 anticipated, and frankly they are not enjoyable for
13 anyone.

14 But under 28 United States Code 1927, the
15 three elements of these sanctions are: One, the
16 attorney must engage in unreasonable and vexatious
17 conduct; two, conduct must multiply the proceedings;
18 three, the amount of the sanction cannot exceed the
19 costs incurred due to this unreasonable conduct.

20 And back to my previous statement about
21 these hearings, it is clear that all of these
22 hearings have been the cause of unreasonable and
23 vexatious conduct.

24 The conduct also multiplied these
25 proceedings. We have obviously been here for all of

1 these hearings, and that is clear multiplicity of
2 the proceedings.

3 And then, the amount of sanction cannot
4 exceed the costs incurred. We have broken down the
5 costs since posttrial and postbriefing.

6 And then, last, the Court, as I stated,
7 can also use its inherent power to levy sanctions
8 against plaintiff's counsel.

9 So based upon the conduct at this hearing
10 and the conduct and representations in these
11 evidentiary hearings, these sanctions must be
12 punitive to stop this kind of behavior that appears
13 to come from the very founders of Weisberg & Meyers.

14 We have seen Mr. Meyers stand by
15 Mr. Radbil's conduct, and, furthermore, we have seen
16 sanctions levied against his other named partner,
17 Mr. Weisberg, in other cases.

18 Here, we have seen kind of a prevalent
19 theme that the apple has not fallen far from the
20 tree and that the roots of the tree are poisonous.

21 We have -- just in these proceedings, we
22 have seen similar conduct from Mr. Meyers, and
23 honestly it's hard to determine who is the true root
24 of the problems with what we have witnessed here.

25 And so far, to break down some of the

1 misrepresentations, there's kind of two elements in
2 here, misrepresentations and just fundamental
3 misunderstandings of how to practice law. To break
4 down the misrepresentations that we have seen by
5 Mr. Radbil, we have seen his biography on the
6 website, the show cause orders in the Washington
7 cases and the misrepresentations to those courts.

8 We have seen his failing --

9 THE COURT: Talking about the
10 representation that he represented a major league
11 baseball player.

12 MR. MARTIN: I kind of lumped that into
13 the biography on the website. With the Washington
14 cases, I am referring to the pro hac vice
15 applications, with the address, the bar number,
16 et cetera.

17 Failing to inform the Court that Regional
18 Adjustment Bureau's corporate representative's
19 deposition was actually taken twice, and that
20 situation was similar to the e-mails offered about
21 myself, which is just not wanting to give the Court
22 the whole story. What I am referring to is having
23 to do with the protective order, how they left out
24 the e-mails where I worked as fast as I could to
25 correct that issue, explain what happened, and get

1 an agreeable protective order.

2 On the lines of the protective order, in
3 pleadings, Mr. Radbil stated that he never received
4 the protective order that was proposed before the
5 eve of the deposition, where, in fact, attached in
6 the briefings in this case we actually have the read
7 receipt notice from the previous e-mail where it had
8 been provided to him that he claimed he had not
9 received. We have the read receipt notice stating
10 that after he said this in a briefing, he had
11 deleted that e-mail without ever reading it.

12 And also, just to clarify the issue of us
13 refusing to enter a protective order, well, that
14 offer from plaintiff's counsel occurred after we had
15 filed a motion to compel. I believe plaintiff's
16 counsel agreed to finally produce their fee
17 agreements in this case, and Judge Kaplan's order
18 reflected that. It said nothing about a protective
19 order. Judge Kaplan said, you have to turn this
20 over, and we refused to enter a protective order for
21 that.

22 Judge Kaplan didn't require it, and it
23 wasn't required, and so we refused to enter one at
24 that time. However, we did want to enter a
25 protective order to protect our client's trade

1 secrets and whatever personal information,
2 et cetera, may be contained in the documents for
3 production.

4 So moving on, we also heard how White said
5 that he was told that the damage would be submitted
6 to the jury -- or to the Court. But in this
7 hearing, we heard how Dr. White was advised that
8 they shouldn't ask for those damages, yet they asked
9 for them in the mediated settlement conference. It
10 all just doesn't make sense, and it's just further,
11 again, prevarication.

12 Both attorneys expressed here that the
13 damages came out of nowhere; yet, after the fact, we
14 see these memorandums, especially the one today that
15 Dr. White gave to his counsel, and not one but two
16 attorneys reviewed these memos, yet nothing was ever
17 produced to defendant's counsel. Seems like there
18 was never even a consideration of should any of this
19 be supplemented and be produced to RAB's counsel.

20 We heard about the expert witnesses and
21 the argument about the late designation of fact
22 witnesses and they were not going to give expert
23 testimony. And then you got the pleading that says,
24 "one of which will give expert testimony." It's an
25 alleged typo, but their billing invoices contain an

1 entry by Melissa Norton stating, "Prepare letter to
2 expert re: date for trial, to attorney for review,
3 and prepare for mailing."

4 Who is left to plant this idea of an
5 expert witness into a support staff or paralegal's
6 mind but her supervisors, the people supervising
7 her, giving her instructions, et cetera. There's
8 almost no way that she would all of a sudden think,
9 we've got an expert witness or a mislabel or
10 misnomer a witness as an expert witness. And then
11 that's even correlated with the pleading that says,
12 "one of which will give expert testimony." And
13 we're talking about a handful of doctors; we are
14 talking about a plaintiff, Dr. White, who has a
15 serious medical condition and is claiming all of
16 these alleged mental anguish damages, an expert is
17 required in this case. So it doesn't make sense
18 that no experts -- no witnesses were going to give
19 expert testimony in this case.

20 And last, we heard Dr. White state,
21 himself, that he did not know or understand the
22 consequences of our Rule 68 offer of judgment. That
23 happened the last day in trial when his counsel
24 wasn't present; he said he did not understand the
25 repercussions of Rule 68 when questioned by this

1 Court and when raised by RAB. And now, one of the
2 pleadings in this case is an affidavit that states
3 that Mr. White actually did understand Rule 68. So
4 it just doesn't make sense.

5 And to shift to misrepresentations by
6 Mr. Meyers, again, the misrepresentations on the
7 website fall in his lap, too. We heard he is the
8 gatekeeper, as well as the owner of the website, and
9 he takes responsibility for the content on his site,
10 which is also a site that he uses to solicit
11 business for his firm.

12 We reviewed the Twitter accounts and the
13 advertising of the White case after it was tried and
14 ultimately lost by plaintiff's counsel. It was also
15 soliciting Texas consumers, and the tweet also
16 stated that Texans need a Texas-sized
17 representation, after he seemed to have said that he
18 was no longer taking Texas clients due to these
19 proceedings.

20 We heard him state that it was a rogue
21 client regarding the testimony on damages, but all
22 of the evidence put together, it doesn't appear that
23 it was a rogue client. He was actually the first
24 person to state that it seemed like a rogue client
25 and Dr. White's mistake.

1 We heard about the Stovall case, where his
2 co-senior partner of the firm was sanctioned for
3 misrepresentations to the Court in suborning
4 perjury, which was also found on both the trial and
5 appellate level.

6 We heard him say that they were not
7 engaging any new Texas state clients in light of
8 these proceedings. And that's kind of odd, because
9 I'm not sure if too many people actually describe
10 clients as state or federal clients; you have state
11 and federal cases or claims. And the crux of this
12 is that all of these types of consumers, consumer
13 complaints, they can be filed in both state and
14 federal court.

15 There's just no weight to this argument
16 that he states that they weren't taking Texas
17 clients and then going around on October 24th filing
18 a case in, I believe, the Southern District that we
19 testified to. And it was also filed only under Joe
20 Panvini's name, rather than Mr. Meyers. And that
21 came subsequent to Volume 3 of the sanctions
22 hearings, page 112, lines 18 through 20, where
23 Mr. Meyers stated: It will never happen again by
24 anyone at my law firm, only me, given that these
25 will all be cases that I handle myself.

1 After he made that statement, a case was
2 filed in either the Southern or Western District by
3 his firm. His name doesn't appear on the docket
4 sheet and doesn't appear as the signature block on
5 the case.

6 And even more so, we have actually found
7 out in between the last hearing and this hearing
8 that another case was filed in the Western District,
9 a class action complaint titled -- it's in the
10 Western District, Maynard v. DOS Enterprises,
11 et al., Case 1:13-CV-00988-SS, an alleged class
12 action complaint filed in the Western District.
13 Only Mr. Panvini shows up on the signature block
14 again, and Mr. Meyers does not show up on the docket
15 sheet. And Mr. Panvini, the one who signed on it,
16 he is the attorney that Mr. Meyers testified to that
17 has never tried a case. So you have an attorney who
18 has never tried a case seeking class certification
19 in the Western District.

20 And then finally, we also heard Mr. Meyers
21 talking about separating from Mr. Radbil; how he
22 would not recommend him to anyone. And then
23 Mr. Radbil represented his firm in front of Judge
24 Hughes in the Scarlott case just days after the
25 those statements -- or actually the day after those

1 statements.

2 And I do want to say that we heard
3 Mr. Meyers' closing argument, stating that he is
4 winding down the law firm and concluding
5 representations. He makes that statement just, I
6 believe, 14 days after he filed a class action in
7 the Western District, so. . .

8 And then I stated that there are two
9 things, misrepresentations and fundamental
10 misunderstanding of how to practice law, and I'm
11 going to hit on the misunderstanding of how to
12 practice law now.

13 we have seen Mr. Radbil and Mr. Meyers
14 both trying to call a witness twice at two separate
15 times, one being RAB's corporate representative,
16 Mr. Wyatt, and then myself, as well. And then we
17 see that, believing that they disclosed his damages
18 in pretrial mediation as properly disclosing them.
19 This Court stated in the February 26th partial
20 transcript of proceedings, page 33, lines 2 through
21 5, this Court stated: "Your strategy and your
22 questions weren't even close to what I thought they
23 would be compared to the summary judgment
24 pleadings."

25 Following that, line 6 through 7, this

1 Court stated: "So you have handled yourself in a
2 way that I see is detrimental to your client in this
3 case."

4 These actual sanctions hearings, they
5 started off by the Court hearing that plaintiff's
6 counsel and his firm have not even informed
7 Dr. White that the Court ordered nearly \$10,000 of
8 costs to be paid to defendant by him. In response
9 to that, this Court simply said, you're kidding.

10 We have also had the fundamental
11 misunderstanding of the issue with the subpoenas out
12 of state. And our argument there is that is just a
13 fundamental misunderstanding of the law, and
14 plaintiffs just simply blame the Court for that.

15 We hear that plaintiff's counsel relied on
16 his clients to prepare the subpoenaed witnesses for
17 trial. In response to that, this Court just simply
18 stated that that's malpractice. And then we also
19 found out that Mr. Meyers never speaks to non-client
20 witnesses except for maybe a courtesy call that they
21 will be subpoenaed. That speaks for itself.

22 The issues pointed out with the basic
23 process of jury selection, we saw that referenced in
24 the Brown case that we hit on; the statements by
25 Judge Hughes, which reflect on the firm's entire

1 practice; and then also, just simply the ultimate
2 lack of candor to the Court.

3 A lot of these problems are direct
4 violations of the Ethics Rules of Texas. They also
5 evidence the possibility that the lack of training
6 and supervision by Mr. Meyers is just the simple
7 potential of poisonous fruit.

8 We heard how this case simply started off
9 with no settlement demand; when one was requested,
10 none was given. At trial we heard that Mr. White
11 did not know what the Rule 60 offer meant. In his
12 e-mail that counsel produced showed -- stated that
13 he understood the rule consequences, but nothing
14 evidences that understanding. There is nothing to
15 show that he understood that the costs could be
16 shifted to him. His October 2nd declaration just
17 fully contradicts his testimony at trial, stating
18 that he did not know the consequences of it.

19 In these proceedings, we have also looked
20 at two Texas cases where clients stated that they
21 did not receive a settlement offer. An attorney or
22 a firm would never want any evidence out there of
23 them not relaying settlement offers. Here we have
24 two examples of it by one firm.

25 Then we also have this case where it's

1 questionable whether Dr. White truly received this
2 settlement offer, this Rule 68 offer of judgment,
3 and he certainly did not understand the consequences
4 of it. Maybe if Dr. White was told that if the jury
5 came back with a number between 1 and 1,000 of
6 damages, he would have been stuck with Regional
7 Adjustment Bureau's entire bill. They also didn't
8 bring Mr. White here to clarify on that issue.

9 In our exhibits, RAB's Exhibit 30, we
10 include the ethics rule, that the client decides
11 settlement, not the firm. And again, we don't
12 actually know what happened here, but we have
13 reviewed Weisberg & Meyers's fee agreement, which
14 sure did put Dr. White between a rock and a hard
15 place and potentially caused him to not accept an
16 in-court settlement that was made after his counsel
17 did not show up.

18 We now have seen in the evidence of the
19 case, which is in Weisberg & Meyers Number 23, where
20 they use the fee agreement as a sword against their
21 client when she received none of the counseling as
22 she was promised by her Weisberg & Meyers attorney
23 and accepted a very favorable settlement offer.
24 Then Weisberg & Meyers came after her for the fees.

25 We heard Mr. Meyers state while he was

1 testifying, "My attorney-client agreement has since
2 changed to add that clients may be responsible for
3 court costs should they lose their case." And based
4 upon what has occurred here today, I will add the
5 fact that, if a client loses a case, that bad faith
6 attorney's fees may be awarded against them.

7 THE COURT: Five minutes.

8 MR. MARTIN: That just shows that they
9 aren't willing to take blame or responsibility for
10 these consequences. With the fee agreement, they
11 just simply add a provision to say that our client
12 can be liable for this. You are now aware of it.

13 Last, for 1927 sanctions and this Court's
14 inherent power to sanction, we should look to where
15 liability can fall. The Professional Rules of
16 Responsibility delineate duties of supervising
17 attorneys; supervision was nowhere to be found in
18 this case.

19 We heard Mr. Meyers state he had never
20 even seen Mr. Radbil at trial; he did not even see
21 Mr. Radbil in trial after a directed verdict on 19
22 claims was granted in the Brown case, or \$42,500 was
23 sanctioned against his client in the Lopez case, and
24 \$92,000 in a judgment was awarded to the defendant
25 in the Whaley case.

1 In looking at their billing records, there
2 really are no signs of supervision. It mainly just
3 consists of supervising partners just sending out
4 settlement e-mails.

5 This Court stated to Mr. Meyers, "It's
6 shocking that you are practicing law with this
7 attitude."

8 And then the Court also stated, "These
9 proceedings supports the position of the defense
10 counsel that you freely misrepresent yourself and
11 support that kind of activity in the other lawyers
12 that you work with which is of grave concern."

13 We heard Judge Hughes say, "A firm that
14 was unfocused and unprincipled. This is prolific
15 here coming from the top and the tree poisoning the
16 fruit."

17 As a managing partner of the firm, he has
18 the duty to supervise and essentially mold the young
19 associates into seasoned attorneys. And what we see
20 here is a young associate who had no supervision
21 allowed to violate the discovery rules and let his
22 client down at trial.

23 Then we also see a supervisor come in and
24 think nothing went wrong except for Mr. Radbil being
25 two hours late, and that's just absurd. Something

1 as fundamentally flawed and sanctions are
2 appropriate to compensate Regional Adjustment Bureau
3 for the amount of fees incurred throughout this
4 litigation, especially in response to the sanctions
5 issues and to prevent further future conduct of
6 Weisberg & Meyers; and then, last, to preserve the
7 integrity of the bar and its performance before the
8 federal courts.

9 It takes a monetary award to get this firm
10 to change its actions. We heard from Mr. Meyers
11 that for the show cause orders that the Court did
12 not sanction him, so I guess there wasn't a problem
13 there. That was in the Oregon case, the Brookter
14 case, the Saunders case. Mr. Meyers simply stated,
15 pretty much, that those don't count because they
16 were not monetarily sanctioned. They did not change
17 their ways, and we are here trying to wrap up a
18 number of those prevailing problems.

19 We have also just seemingly heard everyone
20 else is to blame, it's not our fault. All we have
21 heard is it's Dr. White's fault, being a rogue
22 client; it was Robbie Malone, PLLC's fault for
23 bringing all these issues up; it's Regional
24 Adjustment Bureau's fault for being the defendant in
25 this case; it's the webmaster for the biography;

1 it's the support staff for not sending out the
2 exhibits; it's the marketing company for the tweets
3 regarding this case; it's Judge Hughes just being
4 too rough on them; and then it's even this Court's
5 fault on the subpoena issue and then the pretrial
6 argument for the pretrial order.

7 In conclusion, on the conduct, it does
8 seem that a poisonous apple fell right next to the
9 tree; now it's up to the farmer, which is this
10 Court, to figure out the remedy.

11 On to the damages in this case, RAB
12 incurred \$87,155 in reasonable and necessary
13 attorney's fees through the trial. This Court has
14 already awarded the costs that it incurred up to
15 that point. Since then, not including November, the
16 fees have been \$44,951.50.

17 Regional Adjustment Bureau has been
18 required to prosecute these motions to protect
19 consumers. It should not cost them to do so. The
20 entirety of this litigation has come to total of
21 \$133,051.50, which does not even include our time
22 here today, preparation for the November hearings,
23 which now this is the second one. And since the
24 briefing on attorney's fees, nearly all of RAB's
25 fees incurred have been due to the sanctions

1 briefing and these hearings and the preparation for
2 these hearings. Those are directly due to the
3 Rule 37 violations and the 1927 and the conduct that
4 is sanctionable under this Court's inherent power.

5 These hearings have also been elongated,
6 in part, because of the plaintiff's motion for
7 continuance on the eve of the second hearing, since
8 they believed they were only showing up for a slap
9 on the hand.

10 All of the work and hours resulting in
11 fees spent by RAB easily establish that plaintiff's
12 counsel's vexatious conduct multiply these
13 proceedings exponentially and especially posttrial.
14 At a minimum, RAB should at least be compensated for
15 the sanctions briefing and hearings.

16 So now, just as they proclaim that they
17 are private attorney generals for consumers, RAB has
18 been a private attorney general for the bar, the
19 Court, and the consumers, such as Dr. White, which
20 have been threatened by this kind of representation.

21 Just like the FDCPA as a fee shifting
22 statute, because our client has acted as a private
23 attorney general here for everyone through these
24 four days of hearings, one day for the midnight
25 motion for continuance, RAB should be reimbursed for

1 these damages resulting from Mr. Radbil, Mr. Meyers,
2 and Weisberg & Meyers' conduct.

3 Damages accruing, as I speak here right
4 now, but also damages that possibly could have been
5 prevented if Mr. Radbil and Mr. Meyers could have
6 realized that their actions were so wrong and if
7 they had come down here and shown remorse, given
8 apology, could have resolved it, but obviously that
9 didn't happen.

10 The easiest way to compensate RAB and its
11 counsel's hard, diligent work is under this Court's
12 inherent power. These hearings have been primarily
13 about misrepresentations: The misrepresentations
14 made in discovery, in trial, and directly to these
15 courts; not only in trial, but also in these
16 proceedings; misrepresentations on their website and
17 the press release detail about the Whaley case; and
18 also, again, in these sanctions hearings; also, in
19 their very slogan, Attorneys for Consumers. At some
20 point we have to call these what they are, not
21 really misrepresentations, but lies.

22 Thank you.

23 THE COURT: Thank you. All right, ladies
24 and gentlemen. Couple of things: No more filings;
25 no letters; no nothing. I will enter an order to

1 that effect. If there is something that either side
2 believes should be filed with the Court, you must
3 first seek leave. I have plenty of papers and
4 transcripts to read over before I enter the order in
5 this case.

6 With that said, I don't know that there's
7 anything more that can be said at this juncture, so
8 we are in recess. I will have the order out, I
9 hope, forthwith.

10 We will be in recess.

11 (Court in recess at 2:51 p.m.)
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C E R T I F I C A T E

I, Shawnie Archuleta, CCR/CRR, certify
that the foregoing is a transcript from the record
of the proceedings in the foregoing entitled matter.

I further certify that the transcript fees
format comply with those prescribed by the Court and
the Judicial Conference of the United States.

This 30th day of January 2014.

s/Shawnie Archuleta
Shawnie Archuleta CCR No. 7533
Official Court Reporter
The Northern District of Texas
Dallas Division

My CSR license expires: December 31, 2014

Business address: 1100 Commerce Street
Dallas, TX 75242

Telephone Number: 214.753.2747

SHAWNIE ARCHULETA, CSR/CRR
FEDERAL COURT REPORTER - 214.753.2747